SUPREME COURT OF THE UNITED STATES.

No. 371.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, APPELLANTS,

vs.

JAMES T. SOUTTER AND SHEPHERD KNAPP, SURVIVORS OF GREENE C. BRONSON, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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1 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand, and duly affixed the [SEAL.] seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 21st day of January, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the eighty-ninth.

A. SCOTT SLOAN, *Clerk.*

[$530 95.]

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862.

Present: The Honorable Andrew G. Miller, judge of said court, presiding.

On the sixth day of the said term, to wit, on the thirteenth day of January, A. D. 1862, the following proceedings were had, to wit:

GREEN C. BRONSON, JAMES T. SOUTTER, AND SHEPherd Knapp, trustees, &c.,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Linde, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, and Moses M. Davis.

2 Be it remembered, that heretofore, to wit, on the fifth day of December, A. D. 1859, the above-named complainants filed in the office of the clerk of the district court of the United States of America for the district of Wisconsin, their bill of complaint against the above-named defendants in the words and figures following, to wit:

3 District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPard Knapp, trustees, &c.,
against
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis.

4 To the judges of the circuit court of the United States for the district of Wisconsin:

Greene C. Bronson, James T. Soutter, and Sheperd Knapp, trustees, as hereinafter mentioned, all of whom are residents of the city of New York, and citizens of the State of New York, bring this their bill against La Crosse and Milwaukee Railroad Company, a corporation duly established under the laws of the State of Wisconsin, J. Albert Helfenstein, trustee, Edwin Townsend, Franklin J. Blair, Edmund R Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turten, John Sercom, Sebastian Kentzger, Frederick Lind, Edward H. Brodhead, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, all whom are residents and citizens of said State of Wisconsin; and Selah Chamberlain, who is a citizen and resident of the State of Ohio; Newcomb Cleveland, who is a citizen and resident of the State of Illinois; Joshua Hathaway, who is a citizen and resident of the State of Georgia, and William Gemmell, who is an alien, and a resident of Scotland, in the kingdom of Great Britain, and a subject of the queen of Great Britain. And thereupon your orators complain and say that the several actions and doings hereinafter stated and set forth, so far as they purport to be the acts or doings of your orators, are true of their own knowledge; and as to all the other matters and things hereinafter stated and set forth, your orators are informed and verily believe that the same are true.

5 Under and in pursuance of an act of the legislature of the State of Wisconsin, entitled "An act to incorporate the La Crosse and Milwaukee Railroad Company," approved April 2, 1852, the La Crosse and Milwaukee Railroad Company became and was a body politic and corporate by that name and style, with all such powers, rights, privileges, franchises, and immunities as are mentioned in said act, and particularly with the power, right, privilege, and franchise of constructing and using a railroad in said State of Wisconsin, from La Crosse, in the county of La Crosse, to some point in the city of Milwaukee, a distance of about two hundred miles, which said company has ever since had, and still has its office and principal place of business in said city of Milwaukee, and as your orators are advised and believe said corporation is a citizen of the State of Wisconsin within the

meaning of the constitution and laws of the United States relating to the jurisdiction of the federal courts.

By several other acts of said legislature relating to said company, and by acts concerning or relating to railroad companies in general in said State of Wisconsin, all passed subsequently to said act of incorporation, and before the making of the trust deed hereinafter mentioned, said company became entitled to the additional powers, rights, privileges, franchises, and immunities mentioned in said several acts. To all of which said acts or statutes, including the original act of incorporation, and also to an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," approved June 3, 1856, and being chapter 43 of the Laws of 1856, your orators hereby refer, and pray that the same may be taken and received as part of this bill of complaint as fully as if the same were herein recited and set forth at large.

Among the acts to which reference is above made your orators particularly refer to said act of Congress, by which, among other things, certain lands were granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix River or Lake, and from thence to the west end of Lake Superior, and to Bayfield; and to the act of the legislature of Wisconsin, approved October 11, 1856, by which said company was authorized and empowered, among other things, to construct and operate a railroad from Madison, in the county of Dane, and from the village of Columbus, in
6 the county of Columbia, by the way of Portage City, to St. Croix River or Lake, and from thence to the west end of Lake Superior and to Bayfield; and by which act all the lands which had been granted to said State of Wisconsin by the government of the United States to aid in the construction of the railroad in question, were, upon certain terms and conditions therein mentioned, granted to said La Crosse and Milwaukee Railroad Company, which said act was accepted and agreed to by said company within five days after the passing of the same, to wit, on the 11th day of October, 1856, by a resolution adopted by the directors of said company, and a copy of which resolution, duly certified by the secretary of said company under its corporate or common seal, was within said five days, and on the day last mentioned, deposited in the office of the secretary of state of said State of Wisconsin.

Soon after the passing of the original act of incorporation said company was organized, and commenced the construction of the railroad therein mentioned from La Crosse to Milwaukee, and continued said work until the making of the trust deed hereinafter mentioned, at which time said company had completed and put in operation a portion of the road from a point in the city of Milwaukee to Portage City, or near that place, a distance of about ninety-five miles.

On or about the thirtieth day of December, in the year of our Lord 1856, the board of directors of said company adopted resolutions to make the trust deed to your orators, and to issue bonds as hereinafter mentioned. A true copy of which said resolutions (with the exception of that part of the second resolution which follows the words "Now, therefore, this deed witnesseth," which part is in the same words with the corresponding part of said trust deed, and including all the remaining part of said deed down to the words "In witness whereof") is hereunto annexed, and marked Schedule A, and which resolutions your orators pray may be taken and received as a part of this their bill of complaint.

Afterwards, and on or about the thirty-first day of December, in the year of our Lord 1856, said La Crosse and Milwaukee Railroad Company made

its certain trust deed of that date, in the nature of a mortgage, between said company as party of the first part and your orators as parties of the second part; which deed was duly sealed with the corporate or com-
7 mon seal of said company, and subscribed by the president and secretary of said company, and was also subscribed by your orators, and delivered said deed to your orators, by which said deed said company—after reciting at large said act of Congress and said act of the legislature of Wisconsin, of the 11th of October, 1856, and after also reciting the determination of the company to borrow a sum of money not exceeding ten million of dollars, and to issue the bonds of the company for the repayment of the said money, the form of which bonds was recited and set forth at large in said deed; and after also reciting the determination of the company to secure the payment of the bonds in the manner therein provided—did, for the purpose of securing the payment of said bonds, and the interest warrants or coupons thereto annexed, and upon the trusts in said deed mentioned and contained, grant, bargain, sell, convey, and confirm to your orators all and singular the several tracts, pieces, or parcels of land which then were or might thereafter be or constitute the site of the railway, turn-outs, engine-houses, workshops, depots, and other buildings, and all the lands and real estate which then constituted or might thereafter constitute or be a part of the roads of said railroad company, from Madison, by way of Portage City, to the St. Croix River or Lake, and from Portage City to La Crosse, and all the other property, real and personal, mentioned in said deed, and also all the rights, liberties, privileges, and franchises of said company relating to said roads, and all the lands granted or intended to be granted to said company under or by virtue of said act of Congress and said act of the legislature, so far as said lands pertained or were applicable to the construction of said road from Madison, by way of Portage City, to St. Croix River or Lake; to have and to hold the same to your orators, and the survivor and survivors, successors and successor, of them, and their and his heirs and assigns forever, as joint tenants and not as tenants in common, in trust, nevertheless, and upon the trusts, terms, and conditions in said deed expressed, as by said in part recited deed, now in possession of your orators and ready to be produced as the court shall direct, will more fully and at large appear; a true copy of which said deed, with the exception of said act of Congress and said act of the legislature of the State of Wisconsin, of the 11th of October, 1856, which are therein recited at large, is hereunto annexed, and marked Schedule B, and which copy your orators pray may be taken and received as a part of this their bill of complaint; which
8 said trust deed, after having been duly acknowledged by all the parties thereto, was duly recorded in the office of the secretary of state of said State of Wisconsin, on the thirteenth day of January, in the year of our Lord 1857, in the Book of Railroad Mortgages, pages 92 to 108, inclusive, reference to which said record is also hereby had and made.

Afterwards, on or about the first day of February, in the year of our Lord 1857, said La Crosse and Milwaukee Railroad Company made its several negotiable bonds of that date in the form mentioned in said trust deed, and sealed the same with the corporate or common seal of said company, and caused the names of its president and secretary to be thereto affixed, each of which bonds was for the payment of the principal sum of money therein mentioned to the bearer of said bond, on the first day of February, in the year of our Lord 1877, with interest at the rate of seven per centum per annum, payable in the city of New York, on the first day of February and the first day of August in each year on presentation and delivery of the interest warrants or coupons, to said bonds annexed. Interest warrants, or coupons, for the payment of said interest at the times above mentioned,

were annexed to each of said bonds; and all of which bonds were severally for the payment of the principal sum of one thousand dollars, except one hundred bonds, which were severally for the payment of the principal sum of five hundred dollars. Parcels of said bonds were from time to time registered and countersigned by your orators; and the schedule hereunto annexed, and marked C, shows the several times when such registry and countersigning were made, with the numbers and denomination of the bonds so registered and countersigned on each occasion, which schedule your orators pray may be taken and received as a part of this their bill of complaint.

Afterwards, and about the several times when said bonds were so registered and countersigned by your orators, said company sold, issued, and delivered said bonds to a great number of individuals, partnership firms, and corporate bodies, who thereupon and thereby became the bearers and holders of said bonds, and entitled to the moneys therein mentioned and agreed to be paid. And the bonds so made, registered, and countersigned, and so sold, issued, and delivered, amounted in the aggregate to four millions of dollars of principal money, and no more; and have (or most of them) come, by transfer, into the hands of a large number of persons, some of whom are unknown to your orators and are too numerous to be made parties to this action.

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After two thousand five hundred of said bonds of one thousand dollars each, amounting to two a half million of dollars, had been so sold, issued, and delivered, and on or about the twenty-eighth day of January, in the year of our Lord 1858, said La Crosse and Milwaukee Railroad Company, in pursuance of its covenant in said trust deed, for further assurance and for the purpose of better and more effectually securing the payment of the bonds which had already been issued, and such bonds as should thereafter be issued, to the amount, in all, of four millions of dollars, made its certain indenture or deed of that date, sealed with the corporate or common seal of said company, and subscribed by its president and secretary, and delivered said indenture or deed to your orators; and thereby said company did grant, covenant, and agree to and with your orators as is stated and contained in said indenture or deed. A true copy of which said indenture or deed is hereunto annexed and marked Schedule D, to which your orators refer, and pray that the same may be received and taken as a part of this their bill of complaint; which said indenture or deed, after having been duly acknowledged, was duly recorded in the office of the secretary of state of said State of Wisconsin, in the Book of Railroad Mortgages, on page 321 to 326, both inclusive, on the 11th day of February, 1858; to which record your orators also refer for the contents of said indenture.

Soon after the making of said trust deed, and in January, 1857, said company commenced the construction of that part of said road from La Crosse to Milwaukee which lies or is situate between La Crosse and Portage City, and completed the same from Portage City to La Crosse, a distance of about one hundred and four or five miles, in the month of October, 1858. A part of the road so constructed, to wit, that part which lies or is situate between Portage City and Tomah, otherwise called the Junction, a distance of about sixty-one miles, is also part and parcel of said road from Madison, by way of Portage City, to the St. Croix River or Lake; to aid in the construction of which lands were granted to the State of Wisconsin and to said company, as hereinbefore mentioned. But neither said company nor your orators has or have obtained any deed or other evidence of title to any portion of said lands, or anything further than may be found in the act of Congress and the act of the legislature of Wisconsin, of the 11th of October, 1855, hereinbefore mentioned. The governor of said State of Wisconsin has refused and still refuses to give the certificate required by said

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act to the Secretary of the Interior, and wholly denies that either said railroad company or your orators are entitled to any lands by reason or on account of having constructed said road from Portage City to Tomah, as hereinafter mentioned.

About the first of October, in the year 1857, one Selah Chamberlain, who, for several years last past, has resided most of the time in the State of Wisconsin, and who, if not a citizen of that State, is a citizen of the State of Ohio, under some agreement or arrangement between himself and said railroad company, made subsequently to the right, title, and lien of your orators, and in terms subject and subordinate to the right, title, and lien of your orators, entered into the possession, use, and enjoyment of all that portion of the railroad of said company which had then been completed, which portion extended from the city of Milwaukee, westward, to and beyond Portage City, and from time to time, as sections of the road further west were completed, entered into the possession, use, and enjoyment of the same, and ever since said railroad was completed to La Crosse, as above mentioned, has been and still is in the exclusive possession, use, and enjoyment of the entire road from Milwaukee to La Crosse, with all things appertaining to the same; and said Chamberlain during all the time aforesaid has taken and received to his own private use and benefit, and still does take and receive to his own private use and benefit, all and singular the rents, issues, profits, and income of said railroad, with its equipments and appurtenances.

On the first day of August, in the year 1858, said railroad company utterly failed and made default in the payment of the half year's interest which then became due and payable on said bonds, and wholly neglected and refused to pay the interest warrants or coupons which became due and payable on that day; which said default in payment has ever since continued, and no part of the interest which should have been paid on said first day of August has ever been paid by said company. A small number, about forty or fifty, of the interest warrants or coupons which became due on said first day of August were, within a few months afterwards, surrendered or delivered by bondholders to some officer of the company, on some security or engagement by the company to pay the amount in future; but such payment has not
11 been made, nor have said interest warrants or coupons ever been canceled or destroyed.

On the first day of February, in the year 1859, and again on the first day of August, in that year, said company utterly failed, and made default in the payment of the interest, interest warrants, or coupons, which became due and payable on those days, respectively, and said company never has paid the whole or any part of the moneys, which, according to the tenor and effect of said bonds, should have been paid on those days; and ever since said first day of August, 1859, the amount of interest in arrear and unpaid on said bonds has exceeded the sum of four hundred thousand dollars.

Said company has not acquired title to all the lands which constitute the site of the road from Portage City to La Crosse, nor to all the lands used for depot, engine, station, and other buildings pertaining to said road; the road was not constructed in a substantial or enduring manner, and is continually suffering deterioration from time and use, and said road, with its appurtenances, is not, in the judgment of your orators, worth more than the sum of one million of dollars. And should your orators obtain said lands granted by Congress and the legislature of Wisconsin, so far as the same are or may be applicable to said road between Portage City and Tomah, as above mentioned, it would not add more than half a million of dollars to the security of the bondholders, the lands in question being of poor soil and quality, and of little value as compared with other lands in the same State; said

railroad company now is, and for a long time past has been utterly insolvent, and wholly destitute of property; said Chamberlain is also in insolvent circumstances; and, in any event, the bondholders will lose more than half, and probably fully three-fourths of the moneys due to them from said company as such bondholders, and the longer the bondholders are delayed in obtaining possession of said road from Portage City to La Crosse, and getting into the receipt of the income and profits of the same, the greater their loss will be.

On or about the twenty-third day of August, 1859, your orators, by their attorney and agent, demanded of said Selah Chamberlain the possession and enjoyment of said railroad, from Portage City to La Crosse, with all things appertaining to the same; but said Chamberlain utterly re-
12 fused, and ever since has neglected and refused, to surrender the possession of said road, or its equipment, or appurtenances, to your orators, and still continues to use and enjoy said road, with its appurtenances, and to take and receive the income and profits of the same to his own private use and benefit.

J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmel, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, have or claim to have some interest in, or lien upon, the said mortgaged premises, or some part thereof; which interest or lien, if any, has accrued subsequently to the lien of said mortgage to your orators.

No proceedings at law have been had, nor any suit or action commenced by, or on behalf of your orators, or any holder of any of the bonds of said company, secured by the mortgage aforesaid, or any or either of them, or any interest unpaid or accrued thereon, except only this action.

In tender consideration whereof, and for as much as your orators are remediless in the premises, at, and by the strict rules of the common law, and are only relievable in a court of equity, where matters of this kind are properly cognizable and relievable.

Your orators therefore pray the aid of this honorable court, and that the La Crosse and Milwaukee Railroad Company may be decreed to pay to your orators said principal sum of money above mentioned, with the arrears of interest now due or hereafter to become due and payable thereon, together with the costs and charges in this behalf expended; and in default thereof, that said defendants above-named, and all persons claiming, and to claim under them, or either of them, or otherwise, may be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part thereof; and may deliver over unto said complainants the deeds, demises, and writings relating to or concern-
13 ing all same; and that all and singular said mortgaged premises, with the appurtenances, property, and effects in said mortgage described, may be sold under the decree of this court, and that out of the money arising from the sale thereof your orators may be paid the principal sum due on said bonds of the said the La Crosse and Milwaukee Railroad Company, and all interest money due and to become due thereon, together with their commissions or compensation, and all costs and charges by them in this behalf sustained, or that they may have such other or further relief in the premises as may seem proper, and shall be agreeable to equity and good conscience.

And that an account may be taken of the bonds secured by the said mort-

gage to your orators, and of the amount due on those bonds for principal and interest, or either, and that the names of the lawful holders thereof may be ascertained.

That your orators, as trustees as aforesaid, may be let into the possession of the said railroad from La Crosse to Portage City, and the incomes, tolls, and profits of the same; and also all the depots, machine-shops, station-houses, and other real estate, equipment, and appurtenances connected with that part of the railroad of said last mentioned company, which lies between Portage City and La Crosse, at the date of said first-mentioned mortgage, or at any time since, and also all the other property included in and covered by said mortgage.

And as to the several persons above named, who are properly parties to this bill of complaint, and not citizens of the State of Wisconsin, and who may be out of the jurisdiction of this court, your orators pray that process may be issued to make them parties, if they shall come within such jurisdiction, and that a receiver may be appointed according to the course of practice of this court, and with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, effects, moneys, receipts and earnings of said defendants, the La Crosse and Milwaukee Railroad Company, or said Chamberlain, as far as relates to said railroad from La Crosse to Portage City.

May it please you honor to grant unto your orators the people's writ of subpœna, to be issued under the seal of this court, directed to said
14 defendants, respectively therein, and thereby commanding them on a certain day, and under a certain penalty, to be and appear before the judge of this honorable court, then and there to answer this bill of complaint, and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray.

GREENE C. BRONSON,
JAS. T. SOUTTER,
SHEPERD KNAPP,
Trustees.

CARY & PRATT, *Complainants' Solicitors.*
CLARKSON N. POTTER, *Of Counsel.*

STATE OF NEW YORK,
City and county of New York, ss:

On this 30th day of November, 1859, personally appeared before me, Greene C. Bronson, James T. Soutter and Sheperd Knapp, known to me to be the plaintiffs in the above action, who, being by me severally sworn, did depose and say, the said Bronson, that he had read the foregoing bill of complaint; and the said Knapp and Soutter that they have heard the same read, respectively, and that they, respectively, knew the contents thereof, and that the said bill of complaint is true of their own knowledge, except as to the matters which are therein stated to be upon their information and belief, and as to those matters, they severally believe it to be true.

As witness my hand and official seal the day and year aforesaid.

[L. S.] ALEX. OSTRANDER,
Commissioner for Wisconsin in New York.

SCHEDULE "A."

Copy of resolutions authorizing the issue of bonds and the execution of a deed of trust.

Resolved, That the company, for the purpose of carrying forward its le-

gitimate operations, will issue its bond to the amount of ten millions dollars, nine thousand of which bonds shall *shall* be for the sum of one thousand dollars each, and be numbered from number one to number nine thousand, inclusive, and two thousand shall be for the sum of five hundred dollars each, and be numbered from number one to number two thousand, inclusive. All of said bonds shall be expressed to be for money borrowed for the construction of the railroad from Madison to the St. Croix River or Lake, and shall be payable to the bearer thereof on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons to be thereto annexed. Said bonds shall contain a reservation of the rights of the company to satisfy and discharge any of said bonds at any time before the principal becomes due by paying to the
16 holder thereof the sum of eleven hundred dollars for any one of said bonds of one thousand dollars each, or the sum of five hundred and fifty dollars for any one of said bonds of five hundred dollars each. All of said bonds shall bear date on the first day of February, one thousand eight hundred and fifty-seven, and be signed by the president and secretary and have affixed to them the corporate seal of the company; and the said president and secretary, *and the said president and secretary,* are hereby authorized and directed for and in behalf of the company to sign the same, and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same.

Resolved, That, for the better security of the payment of the aforesaid bonds, a deed of trust shall be executed bearing date at such time as the same may be conveniently executed by the respective parties thereto. Between the La Crosse and Milwaukee Railroad Company, party of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, of the city and State of New York, trustees, parties of the second part, which deed of trust, after reciting the act of Congress approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legis-
17 lature of the State of Wisconsin approved October 11th, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust creat d by an act of Congress entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State, approved June 3d, 1856," and also stating the fact of the acceptance by this company of said last mentioned act; and after further setting forth the determination of this company, as above expressed, to borrow the sum of money not exceeding ten millions of dollars, for the purpose of constructing its road from Madison, by way of Portage City, to St. Croix River or Lake, and to issue its bonds for the repayment of the monies which may be borrowed, with the interest thereon; and also setting forth at length the form and tenor of said bonds, and also the determination of this company to secure the payment of such bonds as may be issued as aforesaid, shall proceed to grant, bargain, sell, convey, and confirm unto the said party of the second part the state, real, personal, and mixed, therein described, together with the rights, liberties, privileges, and franchises in said deed of trust, described in the words and figures following, to wit: Now this deed witnesseth—

(Here follows a copy of said deed as referred to in said resolution.)

Which said deed of trust shall be executed in duplicate on the part of this company, party of the first part, by having thereunto affixed its corporate seal, and by being subscribed by the president and secretary; and the said president and secretary are hereby authorized and directed, for and in behalf of the company, to subscribe the same, and the said secretary is hereby

authorized and directed to affix the corporate seal of the company to the same, and when said deed of trust shall also be executed by the said trustees, parties of the second part, the company will cause the same to be duly recorded without unnecessary delay, in such places and manner as the laws of this State may require for the purpose of making the same a complete and perfect security in favor of the trustees and the persons who may become holders of the bonds.

Resolved, That a copy of these resolutions, duly certified under the seal of the company, be delivered to the trustees in said deed of trust.

19 EXHIBIT B.

Deed of trust, made this thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty-six, (1856,) between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, as after mentioned, all of the city and State of New York, parties of the second part:

Whereas the Congress of the United States, by an act approved June 3, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in that State," did enact as follows:

(Here follows said act.)

And whereas the legislature of said State of Wisconsin subsequently passed an act, approved October 11th, 1858, which is in the following words:

"An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,'" approved June 3, 1856.

(Here follows said act.)

And whereas the said railroad company, after the passing of said last-mentioned act, and on the same day duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified
20 by the secretary of said company, under its corporate seal, was on the same day deposited in the office of the secretary of state.

And whereas said railroad company, for the purpose of constructing its road from Madison, by way of Portage City, to St. Croix River or Lake, has determined to borrow a sum of money not exceeding ten millions of dollars, and to issue its *bonds* for the repayment of the moneys which may be borrowed, with the interest thereon; nine thousand of which bonds (exclusive of the numbering and interest warrants or coupons) will be substantially in the following form: "United States of America, State of Wisconsin, the *the* La Crosse and Milwaukee Railroad Company. Know all men by these presents that the La Crosse and Milwaukee Railroad Company acknowledge themselves to be indebted to the bearer hereof in the sum of one thousand dollars, lawful money of the United States, for money borrowed for the construction of their road from Madison to the St. Croix River or Lake, which sum they agree to pay to the bearer hereof on the first day of February, in the year of our Lord 1877, at the Bank of the Republic, in the city of New York, with interest at the rate of seven per centum per annum, payable in the city of New York, semi-annually, on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. Said railroad company reserves

the right to satisfy and discharge this bond at any time before the principal becomes due, by paying to the holder thereof the sum of eleven hundred dollars, with interest up to the time of such payment, so far as the same may not have been previously paid. This is one of nine thousand bonds, all of the same tenor, and numbered from 1 to 9000, respectively, which, with two thousand bonds for the sum of five hundred dollars each, numbered from 1 to 2000, respectively, make in the aggregate the sum of ten millions of dollars; to secure the payments of all which bonds a deed of trust has been executed by said railroad company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, conveying all such interest as said railroad company has acquired, or may hereafter acquire, in all the land granted to said railroad company by the act of the legislature of the State of Wisconsin approved October 11, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting certain
21 lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856," so far as the lands granted by said act of the legislature are applicable to the construction of the road of said railroad company from Madison, by way of Portage City, to St. Croix Rvier or Lake, estimated to be about one million of acres; and also conveying all such interest as said railroad company has acquired, or may hereafter acquire, in said road from Madison to St. Croix River or Lake, and in the road from Portage City to La Crosse, with all the equipments and other things pertaining to said roads. Reference to which trust deed, bearing date the day of December, 1856, and reciting the said acts of Congress and the legislature, is hereby had and made for a more full description of said lands, roads, and other property, and the interest thereby conveyed to said trustees

In witness whereof, said railroad company has hereto affixed it [L. S.] corporate seal, with the names of its president and secretary, the first day of February, in the year of our Lord, 1857.

"_____ _____, *President.*
"_____ _____, *Secretary.*

"Registered and countersigned by the trustees, this day of , 185 .

"_____ _____,
"_____ _____,
Trustees."

And two thousand of which bonds will be in the like form, but for the sum of five hundred dollars each.

And whereas, said railroad company has determined to secure the payments of such bonds as may be issued as aforesaid, in the manner herein provided:

Now, therefore, this deed witnesseth, that the said railroad company, in consideration of the premises, and of the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said parties of the second part all and singular the several tracts, pieces, or parcels of land which now are, or may hereafter be, or constitute the site of the roadway, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now
22 constitute, or may hereafter constitute or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one,

and from Portage City to La Crosse; and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been, or may hereafter be, procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be procured for or used in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating to said roads.

And furthermore, and upon the consideration aforesaid, the said railroad company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said parties of the second part all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin, hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix River or Lake, estimated to be about one million of acres of land; together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed. And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing acts of
23 Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix River or Lake, had already been designated and conveyed to said railroad company.

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, to the said parties of the second part, and the survivors and survivor, successors and successor of them, and their and his heirs and assigns, forever, as joint tenants, and not as tenants in common, in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to possess, hold, and enjoy said roads from Madison to St. Croix River or Lake, and from Portage City to La Crosse, with the equipments and all other things appertaining to said roads, and use the same, and take and receive the income and profits thereof, in the same manner as though this deed had not been made.

Second. When said road from Madison to St. Croix River or Lake shall be surveyed and located and the particular lands granted as aforesaid, to aid in the construction thereof, shall be ascertained, said railroad company will make schedules of the several sections and parcels of said lands, and affix thereto the minimum prices at which the same are to be sold, which prices shall in the aggregate for all of said lands amount to the sum of ten million of dollars at the least, and will furnish such schedules, duly certified

by said railroad company, to said parties of the second part, together with an affidavit of the president and secretary of said railroad company, that, to the best of their knowledge, information, and belief, the minimum prices have been fairly affixed, having reference to the relative values of the different sections and parcels of land; and whenever said railroad company shall certify, in writing, to said trustees that it has contracted for the sale of any section or parcel of said lands at a sum not less than the minimum price affixed to the same, and ten per centum at the least of the consideration money shall be paid to said trustees, and a bond and mortgage in the proper form from the purchaser to the trustees, securing the payment of the
24 residue of the consideration money, with the interest thereon, as hereinafter mentioned, shall be delivered to said trustees, the mortgage having been first duly acknowledged and recorded, the said trustees will thereupon make, execute, and acknowledge a deed, conveying to such purchaser, his heirs, and assigns, all the right, title, interest, and estate of the said trustees of, in, and to the section or parcel of land so sold, with a covenant that they have not done any act, matter, or thing to defeat or prejudice their title to the lands so conveyed. The principal sum secured by the bond and mortgage of the purchaser must be made payable on or before the first day of February, one thousand eight hundred and seventy-five, and the interest thereon must be at the rate of seven per centum per annum, and be payable annually. The deed of the trustees to the purchaser will bear even date with the bond and mortgage, and will specify the true amount of consideration money, and the manner in which the same has been paid or secured. Sales may be made in like manner of any section or parcel of said lands, at a less sum than the minimum price affixed to the same in such schedules, provided the president or secretary of said railroad company shall make and furnish to said trustees an affidavit that the price agreed on is, in his opinion, the full market value of the land so sold; and provided, also, that the aggregate sums on all sales then previously made, shall be equal to or above the aggregate for all the land sold as specified in said schedule.

Third. The consideration money on any such sale of land may be paid, either in whole or in part, by delivering to said trustees to be cancelled, one or more of the bonds which may have been issued by the railroad company as aforesaid, at their par value; and payments upon any such mortgage as aforesaid may be made by delivering to said trustees one or more of such bonds of the railroad company as aforesaid, at their par value; and two or more purchasers may unite and pay a part or all of the aggregate amount of consideration money on their purchases, or a part or all of the aggregate amount of their mortgages in like manner.

Fourth. All money which may be received by said trustees, under or in pursuance of this trust, after deducting therefrom their compensation for accepting and executing the trust, and all costs, counsel fees, charges
25 and other expenses, shall constitute a sinking fund for the redemption and payment of the bonds so to be issued by the railroad company as aforesaid, and shall be faithfully applied to that object; and until the moneys shall be so applied the same shall be deposited in one of the trust companies in the city of New York, upon the best terms which can be procured for the same; and whenever there shall be any money so on deposit said trustees may, in their discretion, apply the same to the purchase of the bonds which may have been issued by the railroad company as aforesaid, at their market value in the city of New York, provided such market value shall not exceed the par value thereof; and whenever the sum so on deposit shall exceed twenty five thousand dollars, the surplus beyond that sum shall be so applied by said trustees; and in case a sufficient amount of bonds to absorb said surplus cannot be obtained at par in the city of New York, such trustees shall, on the written request of said railroad company, make pur-

chase of bonds, at a premium not exceeding ten per centum, if the same can be had in the New York market.

Fifth. Whenever the trustees shall receive any of the bonds above mentioned in payment for lands sold, or on mortgages, or shall purchase any bonds, as above provided, the same, with any unpaid interest warrants or coupons annexed thereto, shall be immediately cancelled, and shall thereafter only be held as vouchers by said trustees.

Sixth. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, it shall thereupon be lawful, and said trustees are hereby authorized and empowered, in their discretion, to sell, at public or private sale, for the best prices which can be obtained for the same, all or any portion of the lands mentioned in such schedule, for the purpose of obtaining the necessary funds to satisfy such default, and may appoint one or more agents or attorneys to make such sales, execute conveyances to the purchasers, and receive the purchase money; and if the sum in default shall at any time be equal to the amount of the interest, for one year, on all the bonds then outstanding, and the same cannot be satisfied within a reasonable time, by such sales of lands, or if default shall be made in the payment of the principal sum of said bonds, at maturity, said trustees may thereupon, in their discretion, either in person or by their attorney or attorneys, agent or agents, appointed for
26 that purpose, enter into and upon, and take possession of all and singular the said road from Madison to the St. Croix River or Lake, and from Portage City to La Crosse, and all the other property, real and personal, hereinbefore conveyed, or intended to be conveyed; and may operate said road, and take and receive the income and profits thereof, and may sell all and singular the said roads, and all the other property, real and personal, hereby conveyed, or intended to be conveyed, either at public or private sale, and execute and deliver to the purchaser or purchasers deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company of, in, or to said property, and every part and parcel thereof, including the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads which may be sold as aforesaid; but before any sale of the said lands, or either of them, or the rights, liberties, privileges, or franchises aforesaid shall be made at auction, notice of such intended sale shall be published, once in each week for twelve weeks at the least, in two newspapers published in the city of New York, and in three newspapers at the least published in the State of Wisconsin, one of which shall be published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given; and on the written request of the holder or holders of the major part in amount of the bonds then outstanding, the trustees shall proceed to sell and convey said property in the manner herein provided.

Seventh. Said railroad company will cause this deed to be duly recorded in all proper places, and will satisfy and discharge all taxes, charges, liens, and other burdens, which either exist or may hereafter be imposed or arise on the whole or any part of the property hereby conveyed or intended to be conveyed; and said trustees assume no duty or responsibility on those subjects, or in relation to any other matter, except as herein provided.

Eighth. Said trustees may appoint all such attorneys, counsellors, clerks, and other agents, as they may deem proper, in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their selection; and further, neither of the trus-
27 tees shall be answerable for the acts, omissions, or defaults of his associates or associate, nor shall either of the trustees be responsible

for anything short of gross negligence or wilful defaults in the discharge of his duties.

Ninth. This trust extends to such bonds, and such only, as shall be registered and countersigned by said trustees; and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the trustees will reconvey to said railroad company all their rights, title, and interest of, in, and to all of said trust property which may not have been previously disposed of in pursuance of the trust.

Tenth. All the powers and duties of the trustees may be executed and discharged by any two of them; and in case of the death, incapacity to serve, or resignation of any trustee, all the estate and interest hereby created shall vest in the other trustees or trustee, as fully as if they or he only had been named in and had enacted the deed.

The supreme court of the first judicial district of the State of New York may remove either of the trustees, on the application of his associates, or of the railroad company, reasonable notice being first given to such trustees. Any trustee may resign his trust, and thenceforward be discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company and the other trustees, shall be approved by said supreme court. If at any time there shall be only one trustee capable of acting, said supreme court, on reasonable notice to such trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all rights, titles, interest, and authority under the trust, and subject to all duties and responsibilities in relation to the same, as fully as though he had been originally named as a trustee : nd had executed this deed.

Eleventh. Said railroad company will, from time to time, pay all such costs, charges, and expenses as the trustees may sustain, or be put to, in the execution of the trust, and keep them fully indemnified in the premises.

28 Said trustees hereby accept and covenant, and agree to and with said railroad company, faithfully to execute said trust; and said railroad company hereby covenants and agrees to and with said trustees, the survivors and survivor, successors and successor of them, that said railroad company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustees, or to the persons who shall then be trustees, all such further conveyances and assurances, and will do all such further acts as may be either necessary or proper for more effectually vesting in said trustees all such rights, title, interest, or estates, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed or intended to be conveyed.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary; and the trustees have subscribed their names and affixed their seals, the day and year first above written.

[L. S.] BYRON KILBOURN, *President*,
EDWIN H. GOODRICH, *Secretary of the Railroad Company.*

GREENE C. BRONSON,
JAMES T. SOUTTER,
SHEPHERD KNAPP, *Trustees.*

Witnesses as to Byron Kilbourn, president, and Edwin H. Goodrich, secretary:

E. MARINER.
S. H. ALDEN.

Witnesses as to Messrs. Soutter and Knapp:

J. S. ATWOOD.
JOHN BISSELL.

Witnesses for Greene C. Bronson, as to the execution of the foregoing instrument by him:

EDWARD WADE.
S. H. ALDEN.

29 SCHEDULE C,

Showing the times when the several parcels of bonds were registered and countersigned by the trustees, with the numbers on such bonds. They were all for the payment of the principal sum of $1,000 each, except one hundred bonds of $5,000 each, numbered from 1 to 100, both inclusive, registered and countersigned on the 29th of January, 1858.

January 27, 1857,	25	bonds,	numbered from	1 to 25,	both inclusive.
February 5, 1857,	100	do.	do.	26 to 125,	do.
February 9, 1857,	100	do.	do.	126 to 225,	do.
February 19, 1857,	100	do.	do.	226 to 325,	do.
March 5, 1857,	200	do.	do.	326 to 525,	do.
March 6, 1857,	250	do.	do.	751 to 1000,	do.
March 13, 1857,	50	do.	do.	526 to 575,	do.
March 24, 1857,	100	do.	do.	576 to 675,	do.
March 30, 1857,	75	do.	do.	676 to 750,	do.
April 10, 1857,	100	do.	do.	1001 to 1100,	do.
April 15, 1857,	100	do.	do.	1101 to 1200,	do.
April 20, 1857,	100	do.	do.	1201 to 1300,	do.
May 7, 1857,	50	do.	do.	1301 to 1350,	do.
	and 100	do.	do.	1501 to 1600,	do.
May 12, 1857,	100	do.	do.	1351 to 1450,	do.
May 16, 1857,	50	do.	do.	1451 to 1500,	do.
May 30, 1857,	100	do.	do.	1601 to 1700,	do.
June 1, 1857,	200	do.	do.	1701 to 1900,	do.
June 2, 1857,	100	do.	do.	1901 to 2000,	do.
June 27, 1857,	100	do.	do.	2001 to 2100,	do.
July 11, 1857,	100	do.	do.	2101 to 2200,	do.
July 13, 1857,	125	do.	do.	2201 to 2325,	do.
July 14, 1857,	175	do.	do.	2326 to 2500,	do.
January 29, 1858,	400	do.	do.	2501 to 2900,	do.
February 12, 1858,	300	do.	do.	2901 to 3200,	do.
February 15, 1858,	150	do.	do.	3201 to 3350,	do.
February 16, 1858,	200	do.	do.	3701 to 3750,	do.
	and	do.	do.	3801 to 3950,	do.
	also 150	do.	do.	3351 to 3500,	do.
February 23, 1858,	250	do.	do.	3501 to 3700,	do.
	and	do.	do.	3751 to 3800,	do.

January 29, 1858, 100 bonds of $500 each, numbered from 1 to 100, both inclusive.

Total, 3,950 bonds of $1,000 each	$3, 950, 000
100 " 500 "	50, 000
	4, 000, 000

31 SCHEDULE D.

An indenture, made the twenty-eighth day of January, one thousand eight hundred and fifty eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the State of Wisconsin, of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, all of the city of New York, as trustees, as hereinafter mentioned, of the second part.

Whereas by a certain deed of trust, bearing date the 31st day of December, one thousand eight hundred and fifty-six, made and executed between the parties hereto, the said parties of the first part, after reciting their intention to borrow a sum of money, not exceeding ten millions of dollars, for the purpose of constructing their railroad, and to issue their bonds for the repayment of the money so borrowed, to an amount not exceeding that sum, did, for the purpose of securing their bonds to the amount aforesaid, so proposed to be issued, grant and convey to the said parties of the second part, as trustees, all and singular the railroad of the said company, constructed and to be constructed from Madison, by way of Portage City, to the St. Croix River or Lake, and from Portage City to La Crosse, and the appurtenances thereof, and all the lands and premises constituting or which should thereafter constitute the site of the roadway of said company, and the turn-outs, depots, buildings, and other appurtenances of said road, and the rolling stock, equipments, and other property which had been or should be provided for the said road; and likewise all the right and interest, whether present or prospective, of the said company in or to the lands granted by the United States in aid of the construction of said railroad, to which the said corporation was or might be or become entitled under and by virtue of the act of Congress and the act of the legislature of the State of Wisconsin, in said deed of trust recited; by which deed of trust provisions were made for the application of the property so conveyed in trust or mortgaged, or the proceeds of the same, to the payment of the interest
32 upon and the redemption of the principal of the bonds so proposed to be issued, in certain modes and upon certain terms and conditions in the said deed of trust specified, as by reference to such deed of trust (which reference is hereby made with the like effect as if said deed and all the provisions thereof were here recited at large) will more fully appear.

And whereas the said La Crosse and Milwaukee Railroad Company have heretofore caused to be countersigned by the said trustees bonds under and secured or designed to be secured by the said deed of trust or mortgage, to the amount of two millions five hundred thousand dollars, which have been, for the most part, issued and negotiated, and said company being now engaged in the construction and completion of that portion of the said road between Portage City and La Crosse, have ascertained that in order to complete said road to La Crosse, with the necessary turn-outs, stations, depots, buildings, bridges, and all other appurtenances, it will not be necessary to issue bonds under said deed of trust or mortgage to an amount exceeding in the whole four millions of dollars, including those which have been already issued, and have accordingly resolved and determined that the issue of such bonds for that purpose shall be limited to that amount, and that no lien shall be created by the issue of bonds under said mortgage upon that portion of said road between Portage City and La Crosse, or upon the lands appurtenant to that section of said road, to an amount exceeding in the whole four millions of dollars; and have also resolved more fully and aptly to secure the said bonds issued and to be issued within such amount of four millions of dollars, in the manner and to the effect herein provided and declared:

Now, this indenture witnesseth that, in consideration of the premises, and of one dollar to the said company in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the said bonds issued and to be issued, within the said amount of four millions of dollars, and to induce the future taking of said bonds, as well those heretofore issued as those
33 hereafter to be issued by said company, the said La Crosse and Milwaukee Railroad Company have covenanted, granted, and agreed, and do hereby covenant, grant, and agree, to and with the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees as aforesaid, for and on behalf of all such persons and corporations as now are or hereafter shall become or be holders of any of the bonds within the amount of four millions of dollars issued and to be issued, as hereinbefore recited, and to and with the successors of said trustees, that no bonds exceeding in the whole, including those already issued, the said sum of four millions of dollars, shall be issued under said mortgage or deed of trust, bearing date December 31, 1856, so as to make the amounts thereof liens upon the said road from Portage City to La Crosse, or any part thereof, or upon any of the turn-outs, bridges, depots, buildings, or other appurtenances thereof, or upon any the rolling stock, materials, or other personal property acquired or to be acquired for or in connection with the same, or upon any of the lands appurtenant to or acquired or to be acquired under or by virtue of the said acts of Congress, and of the State of Wisconsin by reason of the construction of said road from Portage City to La Crosse, the said section of road from Portage City to La Crosse being in length one hundred and four miles or thereabouts, and being by way of New Lisbon, Tomah, and Sparta. But nothing herein contained shall be so construed as to prevent the said company from issuing bonds under said mortgage or deed of trust to such additional amount, not exceeding six millions of dollars, as shall be requisite for completing their said road from the point known as the Junction, at or near the town of Tomah, to the St. Croix River or Lake, provided the lien thereof shall be so limited as not to interfere with the prior lien, hereinbefore provided for, of the said first-mentioned bonds for four millions of dollars, upon the said section of road from Portage City to La Crosse, with the appurtenances, and the lands appurtenant to, or acquired in connection with, that section of road.

And for the considerations and purposes aforesaid the said La
34 Crosse and Milwaukee Railroad Company do further covenant, grant, and agree to and with the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees as aforesaid, for and on behalf of all such persons and corporations as now are or shall hereafter become or be holders of any of the bonds within the amount of four millions of dollars, issued and to be issued as herein first recited, and to and with the successors of said trustees that notwithstanding the provisions contained in the said deed of trust or mortgage, bearing date December 31, 1856, relating to the proceedings to be had in case of default in payment of the interest upon the bonds issued thereunder, it shall and may be lawful for the said trustees, and they are hereby authorized and empowered, in case default shall he made for the space of sixty days after demand thereof, in the payment of interest upon any of the bonds issued or to be issued, within the limit of four millions of dollars, as herein first recited, or in case default shall be made in the payment of the principal of said bonds, or any of them, when such principal shall become due, to enter upon and take possession of all and singular the said road from Portage City to La Crosse, constructed and to be constructed as aforesaid, with all the appurtenances thereof, including rolling stock, and to operate such road and apply the net income realized therefrom to the payment of the interest in arrear upon the

said bonds issued and to be issued within the limit of four millions of dollars, as herein first recited; and in case the interest which shall have accrued upon any of such bonds issued and to be issued, within such limit of four millions of dollars, as aforesaid, shall at any time remain unsatisfied for six months after presentation of the coupons for payment, or in case the principal of such bonds, or any of them, shall have fallen due and shall remain unpaid, the said trustees or their successors may, and upon the written request of the holders of a majority in amount of such bonds, they shall sell, either at public or private sale, all and singular the said road from Portage City to La Crosse, constructed and to be constructed as aforesaid, with all and singular the several tracts, pieces or parcels of land which now are or may be or constitute the site of the roadway,
35 turn-outs, engine-houses, workshops, depots and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the said section of road from Portage City to La Crosse; and also all and singular the superstructure of that section of road, whether now made or to be made hereafter, and all the engine-houses, workshops, depots and other buildings, and all the other improvements on or pertaining to said section of road, whether now built and made or to be built and made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on the said section of road, and all the materials, tools, implements, utensils and other personal property which have been or may hereafter be procured in connection with said section of road. And also all and singular the rights, liberties, privileges and franchises of said railroad company, of every kind and description relating to the said section of road from Portage City to La Crosse, and execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers, all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company of, in, or to the property so sold, and every part and parcel thereof, including the rights, liberties, privileges, and franchises of said railroad company, in respect of the road from Portage City to La Crosse, which may be sold as aforesaid: Provided, always, that notice of such sale shall be given in accordance with the provisions in that behalf contained in the said deed of trust or mortgage, bearing date December 31, 1856; and it is hereby declared and provided that the net proceeds of such sale so made by said trustees shall be applied to the payment of the amount then owing, (whether then due or yet to become due,) for principal and interest upon the said bonds, within the amount of four millions of dollars, issued and to be issued as herein first recited; and in case the said net proceeds shall be insufficient for the full satisfaction thereof, they shall be applied thereto pro rata in pro-
36 portion to the amounts owing upon said bonds, saving and reserving to the holders of said bonds all their rights, liens, and claims for the satisfaction of the balance remaining owing to them, out of the lands and other securities in that behalf provided by the said deed of trust or mortgage bearing date December 31, 1856: Provided always, nevertheless, that if such default in the payment of interest should occur before the completion of the said railroad to La Crosse, the trustees shall not take possession of said road in consequence of such default, until such default in the payment of interest shall have continued six months; and the sale of said road in consequence of such default shall not be made until after such default shall have continued twelve months.

And it is hereby expressly declared, granted, and agreed, by the said company that the provisions herein contained for the security of the said

bonds, within the amount of four millions of dollars, issued and to be issued as herein first recited, and for the enforcement of the liens and securities provided therefor, are in addition to the provisions, liens, and securities made or created in that behalf by the said original deed of trust or mortgage bearing date December 31, 1856; and that all such original provisions, liens, and securities are, notwithstanding this instrument, to remain in full force and effect, save in so far as conditions of, or limitations in respect of, the manner of the enforcement of such liens or securities are by this instrument qualified or dispensed with.

And the said company do hereby, for the considerations aforesaid, further covenant, grant, declare, and agree to and with the said trustees, for and on behalf of all such persons and corporations as now are, or hereafter shall become or be holders of any of the bonds, within the amount of four millions of dollars, issued and to be issued, as hereinbefore recited, and to and with the successors of said trustees, that all and singular the lots, lands, and real estate whatsoever, which the said company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the city of La Crosse or its vicinity, and all improvements made or to
37 be made thereon, shall be deemed and taken to be appurtenant to the said section of road from Portage City to La Crosse; and for all the purposes of the said original deed of trust or mortgage, bearing date December 31, 1856, and of this instrument, the same shall be deemed to be included in the conveyance or mortgage thereby made to said trustees, and to be covered by the provisions of the said original deed of trust or mortgage, and of this instrument, whether such lots, lands, or real estate shall have been or shall be provided or acquired for actual use by said railroad company, for the purposes of their business or not.

And it is further expressly declared, granted, and agreed by the said company that the entire proceeds of the sales of the lands granted by the State of Wisconsin under the act of Congress of June 3, 1856, to aid in the construction of the roads of the said company, (so far as said lands pertain to or are or shall be derived from the construction of that portion of their said road constructed and to be constructed from Portage City westward to the Junction, so called, at or near the town of Tomah, being a distance of sixty-one miles or thereabouts from Portage City, embracing about three hundred and seven thousand two hundred acres,) after deducting therefrom all charges, counsel fees, and expenses incurred by them in and about this trust, shall be by said trustees disposed of and applied in the first instance to the payment of whatever sum or sums may be due or owing upon the four millions of bonds hereinbefore referred to, in accordance with the provisions of the before-mentioned deed of trust or mortgage bearing date December 31, 1856, and the surplus, if any, after the full satisfaction of said bonds, shall be divided pro rata among the holders of such certificates as may be issued by the said company in connection with the said bonds; allowing to the holders of privileged stock which has been heretofore issued in connection with such bonds, and which shall not be surrendered, such proportion, if any, of the said surplus proceeds as they may be entitled to, which said certificate to be issued in connection with said bonds shall be in substance as follows :

"This certificate entitles the holder of first mortgage land grant bond No. ——, to dividends of such surplus as may be realized by the trus-
38 tees under the provisions of a certain deed of trust or mortgage of this company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, dated January 28, 1858, from the sales of the public lands granted by the State of Wisconsin to this company to aid in the construction of its land grant road, so far as said lands pertain to or are or shall be derived from the construction of that portion of their said road constructed and to

be constructed from Portage City westward to the Junction, so called, at or near the town of Tomah, being a distance of sixty-one miles or thereabouts from Portage City, embracing about three hundred and seven thousand two hundred acres, after providing for the first mortgage land grant bonds issued under the above-mentioned mortgage or deed of trust upon the pledge of said lands, in the proportion that one thousand dollars bears to the sum of four millions of dollars of such bonds, issued and to be issued under the provisions of the above-named mortgage or deed of trust; or in case the holders of any of the bonds heretofore issued under the said mortgage or deed of trust, with the accompaniment of the privileged stock, so called, shall decline to surrender the certificates for such privileged stock in exchange for certificates of this character, then in proportion to the amount of certificates of this character issued and to be issued, to accompany the bonds issued and to be issued, within the above-mentioned limit of four millions of dollars, after allowing to the holders of the privileged stock above referred to, which may not be surrendered, such proportion, if any, of the said surplus proceeds of said lands as they may be entitled to.

Such surplus shall be divided by the trustees whenever the amount realized shall be equal to five per cent. upon the amount of the bonds entitled to this privilege. No responsibility attaches to the holder of this certificate for any charges or assessments.

——— ———, *President.*
——— ———, *Register.*

Milwaukee, Wisconsin, January 28th, 1858.

39 In testimony whereof, the said the La Crosse and Milwaukee Rail road Company, in pursuance of a resolution of their board of directors to that effect have to this instrument affixed their corporate seal, and caused the same to be attested by their president, and the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp have hereunto set their hands and seals the day and year first above written.

The La Crosse and Milwaukee Railroad Company, by—

[L. S.] STEPHEN CLARK, *President.*
JACKSON HADLEY, *Secretary.*

Witnesses: PRENTIS DOW.
D. E. WHEELER.

Witnesses as to signature of Jackson Hadley—
J. P. C. COTHILL.
S. R. R. BUTLER.

Whereupon a subpœna issued in the words and figures following, to wit:

40 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

[SEAL.] The President of the United States of America to La Crosse and Milwaukee Railroad Company, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Linde, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Lauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, and Moses M. Davis, greeting:

You are hereby commanded that you personally appear before the district court of the United States of America for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of January next ensuing, at Milwaukee, to answer to a bill of complaint, ex-

hibited against you in our said court by Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, &c.

And to do further and receive what our said court shall have considered in that behalf. And this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said La Crosse and Milwaukee Railroad Company, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Kretzer, Frederick Linde, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Lauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, and Moses M. Davis, if to be found in his district, and due return thereof make.

Witness the Honorable Andrew G. Miller, justice of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this fifth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the eighty-fourth.

J. M. MILLER, *Clerk.*

CARY & PRATT, *Solicitors.*

It is ordered by our said court that the said La Crosse and Milwaukee Railroad Company, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edmund Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Kretzger, Frederick Linde, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Lauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, and Moses M. Davis, the defendants aforesaid, do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid, otherwise the bill filed may be taken as confessed.

41 And afterwards, and on or before the return day thereof, the marshal made return of the subpœna herein, endorsed thereon as follows, to wit:

42 *Return.*

Served on the within-named La Crosse and Milwaukee Railroad Company by delivering a copy of this subpœna personally to Newcomb Cleveland, president of said company. Served on the within-named Selah Chamberlaid and Newcomb Cleveland by delivering each of them personally a copy of this subpœna this 5th day of December, 1859. Served on the within-named J. Albert Helfenstein, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Avery Hill, A. V. Rudd, John H. Tesche, Ephraim Mariner, Thomas Turton, John Sercomb, and Joshua Hathaway, by delivering each of them personally a copy of this subpœna this 8th day of December, 1859. Served on the within-named D. C. Freeman by leaving a copy of this subpœna at his usual place of abode, with a free white person, a member of the family, this 8th day of December, 1859. Served on the within-named Edward H. Broadhead by leaving a copy of this subpœna at his usual place of abode, with a free white person, a member of the family, this 10th day of December, 1859. Served on the within-named Charles Quentin by de-

livering him personally a copy of this subpœna this 10th day of December, 1859. Served on the within-named Lawrence G. Graham by delivering him personally a copy of this subpœna this 15th day of December, 1859. Served on the within-named Milwaukee and Minnesota Railroad Company by delivering a copy of this subpœna personally to Dwight W.
43 Keyes, secretary of said company, this 19th day of December, 1859. The within-named Leman Graham, Donald D. Scott, E. Bradford Greenleaf, Sebastian Knetzgar, Frederic Lind, William Gemmall, August Lauthrof, Sebra Howard, not found.

J. H. LEWIS, *Marshal*,
By F. HENRY, *Dept.*

Fees, $50 80.

Served on the within-named Donald D. Scott, by leaving a copy of this subpœna at his usual place of abode, with a free white person, a member of the family, this 19th day of December, 1859.

J. H. LEWIS, *Marshal*,
By J. C. GILMAN, *Deputy.*

Fees, $5 38.

I hereby deputize Decatur Vandercook to serve this subpœna on Moses M. Davis.

J. H. LEWIS, *Marshal.*

Served on the within-named Moses M. Davis, by delivering him personally a copy of this subpœna, this 23d day of December, 1859.

D. VANDERCOOK.

Fees, $7 30.

The above return subscribed and sworn to before me this 23d day of December, 1859.

GEO. EYE, *Notary Public, Wis.*

And afterwards, on the 29th of December, 1859, came the defendant J. Albert Helfenstein, trustee, by his solicitors, Messrs. Palmer & Stark, and filed his appearance as follows, viz:

U. S. dist. court, dist. of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, and others.

44 John M. Miller, esq., clerk, &c.:

SIR: Please enter our appearance as solicitors for the defendant, J. Albert Helfenstein, trustee, in the above-entitled cause.

Yours, &c.,
PALMER & STARK,
Solicitors for def't, trustee.

Rule to plead.

And afterwards, on the socond day of January, 1860, came the complainants, by their solicitors, and entered in the Order and Rule Book their rule on the defendants to plead, in the words and figures following, to wit:

GREENE C. BRONSON *et al.*, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*
Of the 1st Mon. Jan., 1860.

On motion of Cary & Pratt, complainants' solicitors, ordered that the de-

fendants plead, answer, or demur to the bill of complaint on file by the 1st Monday of February next.

CARY & PRATT, *Compl'ts' Sol'rs.*

Order extending time to answer.

And afterwards, on the 7th day of February, 1860, came the defendants J. Albert Helfenstein, Selah Chamberlain, and the Milwaukee and Minnesota Railroad Company, by their counsel, and on their motion it was ordered by the court that the time for answering this bill be, and hereby is,
45 extended to the first Monday of March next.

Rule for an injunction.

And afterwards, to wit, on the 25th day of February, 1860, came the complainants, by their counsel, and entered in the Rule and Order Book an order for an injunction, &c., in the words and figures following, to wit:

GREEN C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP vs. LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.* — In equity, of the 25th day of February, A. D. 1860.

On motion of Cary & Pratt, solicitors for complainants, ordered that the defendants in the above-entitled suit show cause, on Monday, the 5th day of March next, at 10 a. m., why an injunction should not issue and a receiver be appointed, according to the prayer of the complainants' bill on file.

CARY & PRATT, *Compl'ts' Solicitors.*

And afterwards, to wit, on the 5th day of March, 1860, came the defend ant J. Albert Helfenstein, by his solicitors, and filed his separate answer, in the words and figures following, to wit:

46 The district court of the United States for the district of Wisconsin, en equity.

The separate answer of J. Albert Helfenstein, trustee, as hereinafter mentioned, one of the defendants impleaded with the La Crosse and Milwaukee Railroad Company, Selah Chamberlain, Newcomb Cleaveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Southof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, and Moses M. Davis, defendants to the bill of complaint of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, &c., to defendants.

This defendant now and at all times hereafter saving and reserving unto himself all and all manner of benefit and advantage of exception
47 which may be had or taken to the manifold errors, uncertainties, insufficiencies, in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as he is advised is material or necessary for him to make answer unto, answers and says that he admits that, under and pursuant to an act of the legislature of the State of Wisconsin, entitled "An act to incorporate the La Crosse and Milwaukee Railroad Company," approved April 2, 1852, said company be-

came and was a body politic and corporate by that name and style, with all such powers, rights, privileges, franchises, and immunities as are mentioned in said act, and particularly with the power, right, privilege, and franchise of constructing and using a railroad in said State of Wisconsin from La Crosse, in the county of La Crosse, to some point in the city of Milwaukee; that said company has ever since had, and still has, its office and principal place of business in said city of Milwaukee. And this defendant is also advised and believes, and therefore admits, that said company
48 is a citizen of the State of Wisconsin within the meaning of the constitution and the laws of the United States relating to the jurisdiction of the federal courts.

This defendant, further answering, says that he is advised, and therefore admits, that by several other acts of the legislation relating to said company, and by acts concerning or relating to railroad companies in general in said State of Wisconsin, all passed subsequently to said act of incorporation, and before the making of the trust deed in said bill of complaint mentioned, said company became entitled to the additional powers, rights, privileges, franchises, and immunities mentioned in said several acts.

This defendant, further answering, admits that by the act of the legislature of the State of Wisconsin mentioned in said bill of complaint, approved October 11th, A. D. 1856, the said company was authorized and empowered, among other things, to construct and operate a railroad from Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, by the way of Portage City, in the county of Columbia, to St. Croix River or Lake, and from thence to the west end of Lake Su-
49 perior, and to Bayfield; and that by said last-mentioned act all the lands that had been granted to said State of Wisconsin by the government of the United States to aid in the construction of the railroad in question by the act of Congress referred to in said bill of complaint, and upon certain terms and conditions therein mentioned granted to said Milwaukee and La Crosse Railroad Company, and that said act of the legislature was accepted and agreed to by said company, as stated in said bill of complaint.

And this defendant, further answering, admits that so after the passage of the original act of incorporation the said company was organized and commenced the construction of the railroad therein mentioned from La Crosse to Milwaukee, and that it continued said work until the making of the trust deed first in said bill of complaint mentioned, and that at the time of the making thereof the said company had completed and put in operation a portion of the road from the city of Milwaukee to Portage City, as stated in said bill.

50 And this defendant, further answering, admits the adoption of the resolution on the 30th day of December, 1856, by the board of directors of said company, marked "Schedule A," and annexed to said bill of complaint, as therein alleged; but this defendant alleges, upon information and belief, that said resolution was in fact adopted in the city of New York.

And this defendant, further answering, admits the making, execution, delivery, and record of the trust deed, marked "Schedule B," annexed to and made a part of said bill of complaint, as therein alleged, and that said "Schedule B" is a true copy thereof, with the exception of the said act of Congress and the said act of the legislature of the said State of Wisconsin of this 11th day of October, A. D. 1856, which are therein recited at large; but this defendant, on information and belief, alleges that said deed was in fact executed by all the parties thereto except the said Edwin H. Goodrich,

in the city of New York, and not in the State of Wisconsin; and this defendant submits whether said deed is the valid deed of said company.

And this defendant, further answering, admits that, on or after the 1st day of February, A. D. 1857, said La Crosse and Milwaukee Railroad
51 Company made its several negotiable bonds of that date in the form mentioned in said trust deed, and stated the same with the corporate or common seal of said company, and caused the names of its president and secretary to be thereto affixed; that each of said bonds was for the payment of the principal sum of money therein mentioned to the bearer of said bond on the first day of February, A. D. 1877, with interest at the rate of seven per centum per annum, payable in the city of New York on the 1st days of February and August in each year, on presentation of the interest warrants or coupons to said bonds annexed; that interest warrants or coupons annexed to of said bonds, and that portion of said bonds were severally for the payment of the principal sum of one thousand dollars, and portions thereof for the payment of the principal sum of five hundred dollars; but as to how many of each denomination were so issued on or after the day last aforesaid this defendant has no knowledge or information, and he therefore leaves the complainants to their proofs thereto.

52 And this defendant, further answering, says that he has been informed and believes, and on such information and belief he therefore admits that parcels of said bonds were, from time to time, registered and countersigned by the complainants; but as to whether the schedule marked "Schedule C," annexed to said bill of complaint, shows the several times where such registry and countersigning were made, and shows also the numbers and denomination of the bonds so issued and countersigned on each occasion so alleged in said bill of complaint, this defendant has no knowledge or information, and he therefore leaves the complainants to their proofs in relation thereto.

And this defendant, further answering, says that he has been informed and believes, and he therefore admits, that said company sold, issued, and delivered portions of said bonds after they were so registered and countersigned to different individuals, partnership firms, and corporate bodies, and that thereby because the bearers and holders of said bonds, and entitled to the moneys therein mentioned and agreed to be paid, but as to whom
53 said bonds were so issued, sold, and delivered into whose hands the same have come by transfer or otherwise, who are the holders and bearers thereof, who are entitled to the money therein agreed to be paid, as to whether the holders thereof are unknown to the complainants, whether they are too numerous to be made parties to this action, and as to whether the bonds so registered and countersigned, and so sold, issued, and delivered, amounted in the aggregate to four millions of dollars of principal money and no more, as is alleged in said bill of complaint, this defendant has no knowledge or information, and he therefore cannot admit or deny the same, and he therefore leaves the complainants to their proofs in relation thereto annexed.

And this defendant, further answering, admits that on the 28th day of January, A. D. 1857, said Milwaukee and La Crosse Railroad Company made, executed, and delivered its certain indenture and deed of that date, being the same deed whereof "Schedule D" annexed to said bill of
54 complaint is a true copy, and that the same was afterwards duly recorded as stated in said bill of complaint.

This defendant, further answering, admits that soon after making said last-mentioned trust deed, and in January, A. D. 1857, said company commenced the construction of that part of their road which lies between Portage City and La Crosse, and that the same was completed to the

latter place, a distance of about one hundred and four miles, in the month of October, A. D. 1858. He also admits that a part of the road so constructed, to wit, that part which lies or is situate between Portage City and Tomah, otherwise called the Junction, a distance of about sixty-one miles, is also part and parcel of said road from Madison, by way of Portage City, to the St. Croix River or Lake, and that to aid in the construction of which land were granted to the State of Wisconsin and to said company, as hereinbefore mentioned

This defendant also admits that neither said company nor the complainants has or have obtained any deed or other evidence of title to any
55 portion of said lands, or anything further than may be found in the act of Congress and the act of the legislature of Wisconsin, of October 11th, A. D. 1856, hereinbefore mentioned.

And this defendant, further answering, says that he has been informed and believes, and on such information and belief he therefore admits that the governor of said State of Wisconsin has refused and still refuses to give the certificate required by said act to the Secretary of the Interior, and wholly denies that either said railroad company or the complainants are entitled to any lands by reason or on account of having constructed said railroad from Portage City to Tomah, as is in said bill stated.

And this defendant, further answering, says that he has been informed and believes, and on such information and belief admits, that on or about the 1st day of October, A. D. 1857, the defendant Selah Chamberlain, under some arrangement or agreement with said company, entered into pos-
56 session, use, and enjoyment of all that portion of the road of said company which had then been completed, and as further sections thereof were completed from time to time, also entered into the possession thereof. But as to whether said Chamberlain has ever since held and now holds possession thereof, with all things appertaining to the same, and whether during all the time aforesaid he has taken and received to his own private use and benefit all and singular the rents, issues, profits, and income of said railroad with its equipment and appurtenances as is in said bill stated and charged, this defendant has no knowledge or information, and he therefore leaves the complainants to their proof in relation to the same

And this defendant, further answering, says that as to whether on the 1st days of August, A. D. 1858, February and August, A. D. 1859, said company made default in the payment of the half year's interest then due on said bonds, and as to whether any of said coupons due August 1st, 1858, A. D., were surrendered to said company as stated in said bill this defendant has no knowledge, but he has been so informed and therefore admits the same to be true, as stated in said bill.

57 This defendant, further answering, says that he has been informed and believes, and he therefore admits, that said company has not acquired title to all the lands which constitute the site of the road from Portage City to La Crosse, nor to all the lands used for depots, engine station, and other buildings pertaining to the road, and as to whether said road is constructed in a substantial and enduring manner, whether it is continually suffering deterioration from time and use (beyond the deterioration the same would naturally suffer without necessary repairs to preserve the same,) whether in the judgment of the complainants it is not worth the sum of one million of dollars, whether, should the complainants obtain said lands granted by Congress and the legislature of Wisconsin, so far as the same are or may be applicable to said road between Portage City and Tomah, it would not add more than half a million of dollars to the security of the bondholders, or what amount it would add to their security, whether the lands in question are of poor soil and quality, or as of little value as

compared with other lands in the same state, this defendant has no knowledge or information, and cannot therefore admit or deny the same,
58 and he therefore leaves the complainants to their proofs in relation thereto.

This defendant, further answering, says that he has been informed, and believes, and he therefore admits, that said railroad company is, and for a long time has been, utterly insolvent and destitute of property, but whether said Chamberlain is insolvent, and whether the bondholders will lose more than one half and probably fully three fourths of the money due them from said company as such bondholders, whether the bondholders are delayed in obtaining possession of said road from Portage City to La Crosse, and getting into receipt of the income and profit of the same, the greater their loss will be, whether on or about the 23d day of August, A. D. 1859, the complainants, by their attorney or agent, demanded of said Chamberlain the possession and enjoyment of said road from Portage City to La Crosse, with all things thereto appertaining, and whether said Chamberlain has neglected and refused to surrender the possession of said road and the appurtenances or the equipment thereof to the complainants, and still continues to use and enjoy said road, with the appurtenances, and to take and receive the
59 income and profits of the same to his own private use and benefit, as all the above matters as stated and charged in said bill, this defendant has no knowledge or information, and cannot therefore admit or deny the same, but leaves the complainants to their proofs in reference thereto.

And this defendant, further answering, says that he as trustee, as hereinafter mentioned, has and claims to have an interest in and lien upon the mortgaged premises in said bill of complaint described, or some portion thereof, which lien and interest was created in manner following, that is to say, that the defendant the La Crosse and Milwaukee Railroad Company heretofore, to wit, on the 26th day of September, A. D. 1857, in pursuance of the power and authority in it vested by the laws of the said State of Wisconsin (reference being hereby made to all such laws of said State as relates to said railroad company,) did execute in due form of law and thereupon duly deliver to this defendant a certain mortgage or trust deed between said company of the first part and this defendant as party of the second part, which deed was duly sealed with the corporate or common seal of the said company and subscribed by the president and secretary of said company and also by this defendant, wherein, after reciting and declaiming in pursuance of its corporate powers,
60 it was then engaged in constructing a railroad from Madison, by the way of Portage City, to the city of Prescott, at the mouth of the St. Croix River or Lake, and to the city of La Crosse, on the Mississippi River, and that for the purpose of constructing said road, and purchasing supplies, materials, and machinery therefor, and putting the same in operation, said company had determined to borrow a sum of money not exceeding one million of dollars, and to issue its bonds for the repayment of the money which might be borrowed, with the interest thereon, the form of which bonds was recited and set forth at large in such deed; and after reciting also that said company had determined to secure the payment of such bonds as might be issued as aforesaid in the manner therein provided, said company did, in consideration of the premises, and of the sum of one dollar upon the trusts in said deed mentioned and contained, grant, bargain, sell, convey, and confirm to this defendant all and singular the several tracts, pieces, or parcels of land which then were or might thereafter be or constitute the site of the roadway, turn-outs, engine-houses, workshops, depots and other buildings, and all the other lands and real estate which constituted or might there-
61 after constitute or be a part of the road of said railroad company from Madison, by the way of Portage City, to the city of Prescott, and

from Portage City to the city of La Crosse; and also all and singular the superstructure of said roads, whether then made or to be thereafter made, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether then made and built or to be hereafter made and built, and also all and singular the locomotive engines and other rolling stock, and all the other equipment of every kind and description which then had been or might thereafter be procured for or used on said roads, or either of them, and all the materials, tools implements, utensils, and other personal *personal* which had been or might thereafter be procured in connection with said roads, or either of them; and also all and singular the rights, privileges, liberties, and franchises of said railroad company of every kind and description relating to said roads; and also all those certain pieces or parcels of land situate, lying, and being in the county of Pierce and State of Wisconsin, and described as following:

62 The undivided half of the southeast quarter and the east half of the southwest quarter of section No. two, (2,) township number twenty-six (26) north of range number twenty (20) west, containing one hundred and ninety two (192) acres; also the undivided half of one hundred and ninety-two (192) acres of land in section two (2) and three (3) in the town and range last aforesaid, and particularly described in a deed thereof, from George W. McMurphy and wife to the said railroad company, dated the 29th day of August, A. D. 1857; also the undivided half of the southwest quarter of section three, (3,) in township number twenty-six (26) north, of range twenty (20) west, containing one hundred and fifty-four (154) acres, being the same land conveyed to the said company by James R. Rice and wife by deed bearing date the 28th day of August, A. D. 1857; also the undivided half of one hundred and four 60-100 acres in section two (2) and three (3) of the town and range last aforesaid, and being the same land conveyed to the said company by Ephraim Hannsberger, by deed dated the 27th day of August, A. D. 1857; also ninety (90) acres of land in section eleven (11) and twelve (12) in the town and range last aforesaid, being the same

63 lands conveyed to the said company by Lewis M. Hansberger, by deed dated the 28th day of August, A. D. 1857; also the undivided half of seventy-five (75) acres of land in section twenty (24) in the town and range aforesaid, and being the same land conveyed to the said company by Pembroke T. Wise and wife, by deed dated the 28th day of August, A. D. 1857; also the undivided half of three hundred and twenty (320) acres in section number one, (1,) in township number twenty-six (26) north, of range twenty (20) west, conveyed to the said company by O. F. Mayor; also the undivided half of one hundred and sixty (160) acres in section number two (2) in the same town and range, conveyed to the said company by S. W. Wright; also the undivided half of three hundred acres (300) in sections number two (2) and three (3) in the said town and range, conveyed to said company by William J. Capp; also the undivided half of twenty-four (24) acres in said section number two (2) and three (3) in the same town and range, conveyed to the said company by John C. McMurphy; also the undivided half of one hundred (100) acres in section number (10) ten in the same town and range, conveyed to the said company by Hilton Doe; also the undivided half of one hundred and sixteen (116) acres in section ten, (10,) and the undivided half of fifteen (15) acres in section number fifteen (15) in the same town and

64 range, conveyed to the said company by George Shazer; also the undivided half of twenty (20) acres in section ten (10) in the same town and range, conveyed to the said company by William Howes and Ferdinand Beach; also the undivided half of eighty (80) acres in section eleven (11) in the same town and range, conveyed to the said company by Elisibeth, Sarah, Jane, and Susan Johnson; also the undivided half of ninety-three (93)

acres in the section, town, and range last aforesaid, conveyed to the said company by Isaac J. Foster; also the undivided half of ninety-five (95) acres in the section, town, and range aforesaid, conveyed to the said company by Chester Fox; also the undivided half of eighty (80) acres in section eleven (11) and twelve (12) in the same town and range, conveyed to the said company by S. O. McKeen; also the undivided half of seventy (70) acres in section number fourteen (14) in the same town and range, conveyed to the said company by Allen H. Wild; and also all the right, title, and interest of said company, legal or equitable, or their present or prospective, of, in, and to all the lands above described, and of, in, and to any other lands in the county of Pierce aforesaid. To have and to hold the same to this defendant and
65 to his successors and successors and to his heirs and forever, in trust, nevertheless, and upon the trust, terms, and conditions in said trust deed or mortgage expressed, as by said in part recited trust deed or mortgage, now in the possession of this defendant, and ready to be produced as this court shall direct, will more fully and at large appear, a true copy of which said trust deed or mortgage is hereto annexed, marked "Schedule A," and which this defendant hereby prays may be deemed and taken to be a part of this his answer the same as if herein set forth at large, which said trust deed or mortgage, after having been duly acknowledged by all the parties thereto, was duly recorded in office of secretary of state of the State of Wisconsin on the 28th day of September, A. D 1857, at 5 o'clock p. m., in Book of Railroad Mortgages, on pages 254, 255, 256, 257, 258, and 259; and also in the office of the recorder of deeds of Pierce County, Wisconsin, on the first day of October, A. D. 1857, at 8 o'clock p. m., in Book "D" of Deeds, on pages 86, 87, 88, 89, 90, 91, and 92, as by the certificates of the acknowledgement and record thereof endorsed thereon will more fully appear, and to the record of which reference is hereby made.

And this defendant, further answering, says that afterwards, and on
66 or about the 2nd day of October, A. D. 1857, said La Crosse and Milwaukee Railroad Company made its several negotiable bonds of that date in the form mentioned in said trust deed or mortgage, and sealed the same with its corporate or common seal, and caused the name of its president and secretary to be thereto affixed, each of which bonds was for the payment of the principal sum of money therein mentioned to the bearer thereof on the 1st day of October, A. D. 1860, with interest at the rate of eight per cent. per annum, payable in the city of New York semi-annually, on the 1st days of April and October, on presentation and delivery of the interest warrants or coupon annexed; that interest warrants or coupons were annexed to each of said bonds for the payment of said interest at the times above mentioned; that said bonds were afterwards registered and countersigned by this defendant, and portions thereof were from time to time thereafter sold, issued, and delivered to various individuals and corporate bodies, and are now outstanding against said company, and that the aggregate amount thereof now outstanding in the hands of holders and bearers, most of whom are now unknown to this defendant, is the sum of three hundred and sixty-eight thousand five hundred dollars; that
67 "Schedule B," hereto annexed, and which this defendant prays may be taken and deemed to be a part of this his answer. the same as if herein incorporated and stated at large, shows the several dates when the said bonds, which are now outstanding and unpaid, were so issued, sold, and delivered, the numbers of each, the amount of money expressed in each to be paid, and the aggregate amount thereof.

And this defendant, further answering, says that on the 1st day of April, A. D. 1858, said railroad company utterly failed and made default in the payment of the half year's interest which then became due and payable on said

bonds last above mentioned, and wholly neglected and refused to pay the interest warrants or coupons which then became due and payable, which said default in payment has ever since continued, and no part of the interest which should have been paid on said last-named day has ever been paid by said company, with the exception, however, of the interest coupons due on said 1st day April, A. D. 1858, annexed to bonds numbered 336, 337, 338, and 339, of $1,000, each which have been paid by said company.

And this defendant, further answering, says that on the 1st day of October, A. D. 1858, and on the 1st days of October and April, A. D. 1859,
68 said company also made default in the payment of the interest warrants or coupons annexed to said bonds due on those days, respectively, and that said default has ever since continued.

And this defendant claims and insists that in case of a foreclosure and sale of the mortgaged premises, pursuant to the prayer of the complainants' bill, that portion of the premises which are not covered by the mortgage to this defendant may be decreed to be first sold, and that then, and in case only that the proceeds of said sale shall be insufficient to pay the amount which may decreed to be due the complainant, or the bondholders represented by them, that portion of the mortgaged premises covered by the mortgage to this defendant be sold; that in case of a sale of that portion of the mortgage premises covered by the mortgage to this defendant the proceeds thereof may be applied to the payment of the bonds issued and now outstanding under the mortgage to this defendant, with the accrued interest thereon, to the holders thereof when ascertained. After the proceeds of the balance of the mortgage premises are applied to the payment of the bonds first issued under the mortgage to the complainants, and after paying
69 such of the bonds only issued, the complainants' mortgage as were actually sold, issued, and delivered to bona fide holders, pursuant to said mortgage, and to the resolution authorizing the execution thereof, prior to the issue, sale, and delivery to bona fide holders of the bonds issued under the mortgage to this defendant and pursuant thereto.

And this defendant, further answering, says that his interest in and lien upon the mortgaged premises, or that portion thereof covered by it, is separate and distinct from the alleged lien thereon of his co-defendants, and, on information and belief, he admits that his co-defendants, except said company, have some lien on said mortgaged premises, subject to the lien of the complainants, but subject also to the lien of this defendant as aforesaid, and, on information and belief, he admits also that no proceedings at law have been had, and that no suit or action has been commenced, except only this action by or on behalf of the complainants or of any holder of any of the bonds secured by the complaints' mortgage to collect the amount due
70 thereon. And this defendant denies that any other matter or thing in the said complaints' said bill of complaint contained not herein and hereby well and sufficiently answered thereto, confessed and avoided, or denied is true, to the knowledge, information, and belief of this defendant.

J. A. HELFENSTEIN.

BUTLER, BUTTRICK & COTTREL, *of counsel, and*
PALMER & STARK, *Solicitors for def't Helfenstein.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

Be it remembered, that on this 5th day of March, A. D. 1860, before me personally appeared J. Albert Helfenstein, and, being by me duly sworn, did make oath and say that he had heard read the foregoing answer subscribed by him; that he knew the contents thereof, and that the same were true to his own knowledge, except as to the matters therein stated to be on information and belief, and that as to those matters he believed it to be true.

J. M. MILLER, *Clerk, &c.*

71 SCHEDULE "A."—*Helfenstein mortgage.*

Deed of trust, made this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, (1857,) between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and J. Albert Helfenstein, trustee, as hereinafter mentioned, of the city of Milwaukee, and State of Wisconsin, party of the second part.

Whereas the said La Crosse and Milwaukee Railroad Company, in pursuance of their corporate powers, are engaged in constructing a railroad from Madison, by the way of Portage City, to the city of Prescott, at the mouth of the St. Croix River or Lake, and to the city of La Crosse, on the Mississippi River; and for the purpose of constructing the said road and purchasing supplies, materials, and machinery therefor, and putting the same in operation, the company has determined to borrow a sum of money, not exceeding one million of dollars, and to issue its bonds for the repayment of the money which may be borrowed, with interest thereon, five hundred of which bonds (exclusive of the numbering and interest warrants or coupons) will be substantially in the following form:

UNITED STATES OF AMERICA,

State of Wisconsin, the La Crosse and Milwaukee Railroad Company:

Know all men by these presents that the La Crosse and Milwaukee Railroad Company acknowledge themselves to be indebted to the bearer hereof in the sum of one thousand dollars, lawful money of the United States, for money borrowed for the construction of their road from Madison to the City of Prescott, on the St. Croix River or Lake, and from Portage City to the city of La Crosse, which sum they agree to pay to the bearer hereof on the first day of October, in the year of our Lord 1860, at the "Bank of the Republic," in the city of New York, with interest at the rate of eight per centum per annum, payable in the city of New York semi-annually, on the first day of April and the first day of October in each year, on presen-

72 tation and delivery of the interest warrants or coupons hereto annexed.

This is one of the five hundred bonds, all of the same tenor and numbered from 1 to 500, respectively, which, with two thousand bonds for the sum of one hundred dollars each, numbered from 1 to 2000, respectively, and six hundred bonds for the sum of five hundred dollars each, numbered from one (1) to six hundred (600,) respectively, make in the aggregate the sum of one million of dollars, to secure the payment of all which bonds a deed of trust has been executed by said railroad company to J. Albert Helfenstein, conveying all such interest as said railroad company has acquired or may, hereafter acquire of all the lands in said deed of trust described; and also conveying all such interest as said railroad company has acquired or may hereafter acquire in said road from Madison to Prescott, and in the road from Portage City to La Crosse, with all the equipments and other things pertaining to said road; reference to which trust deed, bearing date the 26th day of September, 1857, is hereby had for a more free description of said lands, roads, and other property, and the interest thereby conveyed to said trustee.

In witness whereof, said railroad company has caused these presents to be signed by its president and secretary and its corporate seal to be hereto affixed, the first day of October, in the year of our Lord 1857.

——— ———, *President.*

——— ———, *Secretary.*

Registered and countersigned by the trustee, this day of , 185 .

——— ———, *Trustee.*

And two thousand of which bonds will be in the like form, but for the sum of one hundred dollars each, and six hundred of which bonds will be in the like form, but for the sum of five hundred dollars each.

And whereas said railroad company has determined to secure the payment of such bonds as may be issued as aforesaid in the manner herein provided:

Now, therefore, this deed witnesseth that the said railroad company, in consideration of the premises and of the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadway, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said railroad company from Madison, by the way of Portage City, to the city of Prescott, and from Portage City to the city of La Crosse, and also all and singular the superstructure of said roads, whether now made or to be made here-
73 after, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made or to be built and made hereafter; and also all and singular the locomo ive engines, and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads, or either of them; and all the materials, tools, implements, utensils, and other personal property which have been or may hereafter be procured in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating to said roads; also all those certain pieces or parcels of land situate, lying, and being in the county of Pierce and State of Wisconsin, and described as follows, viz: The undivided half of the southeast quarter and the east half of the southwest quarter of section No. two, (2,) township No. twenty-six (26) north, of range No. twenty (20) west, containing one hundred and ninety-two acres (192 acres;) also the undivided half of one hundred and ninety-two (192) acres of land in section two (2) and three (3) in the town and range last aforesaid, and particularly described in a deed thereof from George W. McMurphy and wife to the said party of the first part, dated the twenty-ninth (29th) day of August, A. D. 1857; also the undivided half of the southwest quarter of section three (3) in township number twenty-six (26) north, of range twenty (20) west, containing one hundred and fifty-four acres, (154 acres,) being the same land conveyed to the said company by James R. Rice and wife, by deed bearing date on the twenty-eighth (28th) of August, A. D. 1857; also the undivided half of one hundred and four 60-100 acres (104 60-100 acres) in section two (2) and three (3) of the town and range last aforesaid, and being the same lands conveyed to the said party of the first part by Ephraim Hamsberger, by deed dated the twenty-seventh day of August, A. D 1857, also ninety acres (90 acres) of land in section eleven (11) and twelve (12) in the town and range last aforesaid, being the same lands conveyed to the said party of the first part by Lewis M. Hamsberger, by deed dated the twenty-eighth (28th) day of August, A. D. 1857, and to which deed reference is made for a more particular description thereof; also the undivided half of seventy-five (75) acres of land in section twenty-four (24) in the town and range aforesaid, and being the same land conveyed to the said company by Pembroke and Wise and wife, by deed dated the twenty-eighth day of August, A. D. 1857, and to which deed refer-

ence is made for a more particular description thereof; also the undivided half of three hundred and twenty acres (320) in section No. one, (1), in township No. twenty-six (26) north, of range twenty (20) west, conveyed to the party of the first part by O. F. Maxon; also the undivided half of one hun-
hundred and sixty (160) acres in section No. two (2) in the same town
74 and range, conveyed to the said party of the first part by S. W. Wright; also the undivided half of three hundred acres (300) in section No. two (2) and three (3) in the same town and range, conveyed to the said party of the first part by William J. Capp; also the undivided half of twenty-four (24) acres in said section No. two (2) and three (3) in the same town and range, conveyed to the said party of the first part by John C. McMurphy; also the undivided half of one hundred acres (100) in section ten (10) in the same town and range, conveyed to the said party of the first part by Hilton Dol; also the undivided half of one hundred and sixteen acres (116) in section ten (10,) and the undivided half of fifteen (15) acres in section fifteen (15) in the same town and range, conveyed to the said party of the first part by George Shazer; also the undivided half of twenty (20) acres in section ten (10) in the same town and range, conveyed to the said party of the first part by Elizabeth, Sarah Jane, and Susan Johnson; also the undivided half of ninety-three (93) acres in section, town, and range last aforesaid, conveyed to the said party of the first part by Isaac J. Foster; also the undivided half of ninety-five (95) acres in the section, town, and range last aforesaid, conveyed to the said party of the first part by Chester Fox; also the undivided half of eighty (80) acres in section eleven (11) and twelve (12) in the same town and range, conveyed to the said party of the first part by S. O. McKeen; also the undivided half of seventy (70) acres in section No. fourteen (14) in the same town and range, conveyed to the said party of the first part by Allen H. Weld; and also all the right, title, and interest of the said party of the first part, legal and equitable and present or prospective, of, in, and to all the lands hereinbefore described, and of, in, and to any other land in the county of Pierce aforesaid.

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed to the said party of the second part, and his successors and successor, and his heirs and assigns forever, in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to possess, hold, and enjoy said roads hereinbefore described, with the equipments and all other things appertaining to said road, and use the same, and take and receive the income and profits thereof in the same manner as though this deed had not been made.

Second. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, it shall thereupon be lawful, and said trustee is hereby authorized and empowered, in his discretion, to sell at public or private sale, for the best prices
which can be obtained for the same, all or any portion of the lands
75 hereinbefore described, for the purpose of obtaining the necessary funds to satisfy such default, and may appoint one or more agents or attorneys to make such sales, execute conveyances to the purchasers, and receive the purchase-money, and if the sum in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, and the same cannot be satisfied within a reasonable time by such sales of lands, or if default be made in the payment of the principal sum of said bonds at maturity, said trustee may thereupon in his discretion, either in

person or by his attorney or attorneys, agent or agents, appointed for that purpose, enter into and upon and take possession of all and singular the said road hereinbefore described, or any part of division thereof, and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and may operate said road, and take and receive the income and profit thereof, and may sell all and singular the said roads, and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, either at public or private sale, and execute and deliver to the purchaser or purchasers deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, and to said property and every part and parcel, including the rights, liberties, privileges, and franchises of said railroad company in respect to the roads which may be sold as aforesaid, but before any sale of the said lands or roads, or either of them, or any part thereof, or the rights, liberties, privileges, or franchises aforesaid, shall be made at auction, notice of such intended sale shall be published once in each week for twelve weeks, at the least in two newspapers published in the city of New York, and three newspapers at the least published in the state of Wisconsin, one of which shall be published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

Third. Said railroad company will cause this deed to be duly recorded in all proper places, and will satisfy and discharge all taxes, charges, liens, or other burdens which either exist or may hereafter be imposed or arise on the whole or any part of the property hereby conveyed or intended to be conveyed, and said trustee assumes no duty or responsibility on those subjects, or in relation to any other matter except as herein provided.

Fourth. Said trustee may appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their selection; and further, the trustee shall not be answerable or responsible for anything short of gross negligence or wilful default in the discharge of his duties.

Fifth. This trust extends to such bonds and such only as shall be registered and countersigned by said trustee, and when all of said bonds
76 shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment, and whenever the trust shall determine, and any moneys which shall be due to the trustee shall be paid, the trustee will reconvey to said railroad company all his right, title, and interest of, in, and to all of said trust property which may not have been previously disposed of in pursuance of the trust.

Sixth. The supreme court of the State of Wisconsin may remove the trustee on the application of the railroad company, reasonable notice being first given to such trustee. Any trustee may resign his trust and thenceforward be discharged from all further duty or obligation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. If at any time the trustee shall be removed or resign the trust, the said supreme court, on reasonable notice to said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all rights, titles, interest, and authority under the trust, and subject to all duties, responsibilities in relation to the same as fully as though he had been originally named as a trustee and had executed this deed.

Seventh. Said railroad company will, from time to time, pay all such costs, charges, and expenses as the trustee may sustain, or be put to in the execution of the trust, and keep him fully indemnified in the premises.

Said trustee hereby accepts, covenants, and agrees to and with said railroad company faithfully to execute said trust, and said railroad company hereby covenants and agrees to and with said trustee, his successors and successor, that said railroad company will from time to time, during the continuance of the trust, make, execute, and cause to be duly recorded and delivered to said trustee, or to the person or persons who shall then be trustee, all such further conveyances and assurances, and will do all such further acts as may be either necessary or proper for more effectually vesting in said trustee all such rights, title, interest, and estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, and to all and every part of the property hereby conveyed or intended to be conveyed.

(Signed) BYRON KILBOURN, *President.*
JACKSON HADLEY,
Secretary of the Railroad Company.
J. ALBERT HELFENSTEIN, [SEAL.]
Trustee.

In the presence of—
THOMAS W. BEAVER.
S. CHAMBERLAIN.

77 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who, being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common corporate seal of said company, and was affixed thereto by their authority, and that he as president, and Jackson Hadley as secretary, subscribed their names thereto by like authority; and on the same day before me personally appeared J. Albert Helfenstein, described in and who executed the foregoing instrument, and acknowledged that he executed the same freely, for the uses and purposes therein mentioned, and I certify that the person who made such acknowledgment is known to me to be the individual described in and who executed said instrument.

(Signed) H. L. PALMER,
Notary Public, Milwaukee, Wis.

78 SCHEDULE B,

Showing the several dates when the bonds now outstanding under the mortgage to J. Albert Helfenstein were issued, the numbers of each, the amount expressed in each to be paid, and the aggregate amounts thereof:

Date of, &c.	Numbers.	Am't.	Total am't.
1857.			
October 2	221 to 300, inclusive.....	1, 000	80, 000
	1 to 200 "	.....	200, 000
28	1 to 10 "	500	5, 000

SCHEDULE B—Continued.

Date of, &c.	Numbers.	Am't.	Total am't.
1857			
Oct. 31	301 to 322, inclusive	1,000	22,000
	325 to 350 "	1,000	26,000
	11 to 14 "	500	2,000
Dec. 17	203 to 218 "	1,000	16,000
	209, 351, 352, 360, and 376	1,000	5,000
	379 to 386, inclusive	1,000	8,000
	15, 16, 46	500	1,500
	53 to 56, inclusive	500	2,000
	1 to 6 "	100	600
	41, 42, and 43	100	300
	51	100	100
			$368,500

80 *Answer of Chamberlain.*

And afterwards, on the 3d day of April, 1860, came the defendant Selah Chamberlain, by his solicitors, Messrs. Emmons, Van Dyke, and Hamilton, and filed his answer as follows, viz:

The district court of the United States for the district of Wisconsin, in equity.

The several answers of Selah Chamberlain to the bill of complaint of Greene C. Bronson, James T. Soutter, and Sheperd Knapp, against Selah Chamberlain, impleaded with the La Crosse and Milwaukee Railroad Company and others, defendants.

This defendant now and at all times hereafter saving and reserving unto himself all manner of benefit and advantage of exception to the many errors and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as he is advised it is material or necessary for him to make answer unto, answering says: The defendant is informed and believes to be true, and therefore admits, that the La Crosse and Milwaukee Railroad Company did execute, at or about the time and in the manner alleged in the bill of complaint, and deliver to the complainants the deed of trust, a copy whereof, or what purports to be such, is set forth in Schedule B, annexed to said bill of complaint, and that said company adopted
81 the resolution a copy whereof, or what purports to be such, is set forth in Schedule A, and that said company also executed and delivered to the complainants the contract or agreement, a copy whereof, or what purports to be such, is set forth in Schedule D, annexed to said bill of complaint. But this defendant is advised and believes and submits to this honorable court that nevertheless the said deed of trust created, nor at the time of exhibiting said bill of complaint, did the same, either of itself or by reason of anything done or suffered thereunder, constitute or engender any lien or encumbrance upon the railroad of said company as at present constructed from Portage City to La Crosse, because, he says, that at the time of the execution and delivery of said deed of trust no part of the railroad of

said company extending from Portage City to La Crosse, and purporting to have been embraced in said deed of trust, was in existence or in process of construction.

And this defendant, further answering, says that on or about the first day of October, 1857, he did enter into the possession, use, and enjoyment of all that portion of railroad of said company which had then been completed,
and which portion extended from the city of Milwaukee westward to
82 and beyond Portage City; but this defendant further says that he so entered into the possession, use, and enjoyment thereof under and by virtue of a contract or agreement evidenced by an instrument of mortgage executed and delivered to him by said company, and bearing date on or about the 26th day of September, 1857. And he further says that in virtue of said mortgage he not only entered into possession of that portion of the railroad of said company which was then completed, but also at the same time of the entire railroad route of said company from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its right of way, depot grounds, buildings, tenements, and fixtures connected therewith or appurtenances thereto, with all the rights, privileges, and franchises connected therewith or incident thereto. And he further says that said instrument of mortgage, and his possession thereunder, was intended, and was in truth and in fact, to secure to him, this defendant, a just and bona fide debt due him from said company, then amounting to the sum of eight hundred thousand dollars and upwards. But this defendant desires that the incumbrance and right of possession which he thus acquired was in terms, or in law or fact, subject or subordinate to the pretended right,
title, or lien of complainants. And the defendant further admits that
83 he continued in the possession, use, and enjoyment of said road as sections thereof westward were completed, and until the same was completed to La Crosse, and still in exclusive possession, use, and enjoyment of the entire road from Milwaukee to La Crosse, with all things appertenances to the same, save and except what said company may claim or be entitled to in virtue of the legislative grant of lands mentioned in the bill of complaint, but that such possession, use, and enjoyment has ever been, and still is, under and in virtue of said instrument of mortgage, or, as it is sometimes denominated, lease, and that all and singular the revenues, rents, issues, profits, and income of said road, with its equipment and appurtenances which he has received or claimed the right to receive or control, have been received in virtue of said mortgage, and his possession thereunder, and to the uses and purposes in the said instrument mentioned, and to none other, defendant refers to the original of said instrument in his possession to be produced and proven as this honorable court may direct.

And defendant, further answering, says that there was due to him
84 of indebtedness, to be secured by the mortgage under which he entered into possession as aforesaid, upon the first day of January, 1860, the sum of seven hundred seventy-eight thousand four hundred three dollars and sixty-three cents, and that the sum has not since diminished, but, on the contrary, has increased by the accumulating interest thereon. And defendant further says that, in addition to the indebtedness aforesaid, he is creditor of said railroad company, as the equitable owner of a certain judgment, rendered in the district court of the United States for the district of Wisconsin, on the law side thereof, in favor of one Newcomb Cleveland, for the sum of one hundred and eleven thousand seven hundred and twenty-seven dollars and seventy-one cents, besides costs, and interest thereon since the third day of October, 1857, and which said judgment, as this defendant is advised, creates and forms an equitable lien on the said railroad of said company.

And defendant further says that of the indebtedness secured to him by

the instrument of mortgage aforesaid, and his possession thereunder, about the of six hundred and twenty-nine thousand dollars thereof, is
85 embraced in a judgment rendered in this honorable court, on the law side thereof, and on or about the second day of October, 1857, he is advised and submits to this honorable court that the indebtedness secured to him by his judgment and mortgage aforesaid, and the amount due upon the said Cleveland judgment are liens upon said railroad, on that portion thereof extending from Portage City westward to La Crosse, superior and precedent to the lien asserted by the complainants.

And the defendant, further answering, says that he is informed and believes, and therefore admits, that the aggregate sum of four millions of dollars of bonds have been registered and countersigned by the complainants; and that Schedule C, annexed to the bill of complaint, shows the dates when they were so registered and countersigned; but this defendant is informed and believes, and so charges the fact to be, that of such four million dollars of bonds, about the sum of seven hundred and seventy-five thousand dollars thereof were so registered and countersigned and issued by said company, prior to the time when said line of railroad embraced within said trust deed was actually commenced and in process of construction,
86 and that in addition thereof, and prior to the first day of October, 1857, no more than the sum of twelve hundred and sixteen thousand dollars of said bonds were issued and made use of by said company; and that of such twelve hundred and sixteen bonds, many of them were negotiated and disposed of at merely nominal rates, and greatly below the par value thereof, and that all the remaining bonds constituting said sum of four million dollars, that is to say the sum of two million nine thousand dollars, were issued and disposed of by said company, at merely nominal rates, and in some instances without any consideration whatever, and that none of said latter amount were disposed of by said company at rates to exceed thirty cents on the dollar, and that the whole of said two million nine thousand dollars were issued by said company, subsequent to the first day of October, 1857, and, indeed, subsequent to the 25th of January, 1858.

And this defendant, further answering, says that since the first day of October, 1857, to the present time, there have been no surplus or nett earnings or revenue from the western division, so called, or that portion of said railroad extending from Portage City to La Crosse; but, on the con-
87 trary thereof, that since the first day of August, 1858, to the first day of March, 1860, the excess of expenses for the maintenance and operation of said railroad from Portage City to La Crosse amounted to the sum of seventy-two thousand eight hundred and fifty-two dollars and forty-five cents, and for such sum, which has been expended by this defendant, including the value of the use of rolling stock, pertaining to the eastern division, or that portion of said road extending from *from* Milwaukee to Portage City, and amounting to about thirty thousand dollars, this defendant claims, in addition to the indebtedness herebefore stated as due him from said company, to be a lien and incumbrance prior to that asserted by the complainants.

And defendant further says that, in addition to the indebtedness and claims by him hereinbefore stated, he has been from time to time obliged to obligate himself for claims by individuals, for right of way on the line of said road, and between Portage City and La Crosse, and for law expenses connected therewith, and for wood contracts, and otherwise, to an
88 amount exceeding fifteen thousand dollars; this is exclusive of sums expended in depot buildings at La Crosse, in La Crosse, on grounds leased by this defendant, amounting to about the sum of sixteen thousand dollars, for all which he claims a lien prior and superior to that of the lien and incumbrance asserted by the complainants.

And this defendant, further answering, says that the contract or agreement entered into between the said company and the said complainants on the 28th of January, 1858, and a copy whereof is annexed to the bill of complaint in Schedule D, was subsequent in time to the date of this defendant's mortgage and possession as aforesaid. And this defendant is advised that in so far as the same attempts to create any new rights, privileges, or remedies in favor of the complainants, this defendant is in nowise bound thereby, but that, in his regard, and as between the complainants and this defendant, they are remitted and confined to the terms, conditions, and covenants contained in the said deed of trust, and that if the latter shall be held to be of any validity, as against defendant, the complainants can
89 alone pursue the remedies therein provided for.

Wherefore the defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

S. CHAMBERLAIN.

EMMONS, VAN DYKE & HAMILTON, *Solis. for Def't.*
WM. P. LYNDE, *of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

Selah Chamberlain, of the city of Cleveland, in the State of Ohio, being duly sworn, says that he has read the foregoing answer by him subscribed, and that he knows the contents thereof, and that the same is true of his knowledge, except as to the matters and things therein stated to be upon his information and belief, and that as to those matters he believest to be true.

J. M. MILLER,
Clerk U. S. Court, Dist. of Wis.

90 *Complainants' replication to Helfenstein.*

And afterwards, on the 9th day of April, 1860, came the complainants by their solicitors, and filed their replication to the answer of J. Albert Helfenstein, trustee, &c., as follows, viz:

Before the judge of the district court of the United States for the district of Wisconsin, in equity.

The replication of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, &c., complainants, to the separate answer of J. Albert Helfenstein, defendant, impleaded with others.

These repleants now and at all times hereafter saving and reserving to themselves all and all manner of benefit or advantage of exception that may be had or taken to the manifold errors and insufficiencies of the said answer of the said defendant, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient for the said defendant to make answer unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by these repleants, without this, that any other matter or thing in the said answer contained material or effectual to be replied unto by these repleants, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things these complainants are ready to maintain and prove, as this court shall direct, and humbly pray as in
91 and by their said bill they have already prayed.

CARY & PRATT, *Compl'ts' Sol'rs.*

And afterwards on the 13th day of April, 1860, came the parties by their

counsel, and by consent it is ordered by the court that this cause be, and hereby is, set down for final hearing peremptorily on Thursday, the seventeenth day of May next, at ten o'clock in the forenoon of said day.

Replication complaints to Chamberlain.

And afterwards, on the 8th day of May, 1860, came the complainants, by their solicitors, and filed their replication to the answer of Selah Chamberlain, as follows, viz:

Before the judge of the district court of the United States for the district of Wisconsin, in equity.

The replication of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustee, &c., to the separate answer of Selah Chamberlain, one of the defendants.

These repleants now and all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exception which may be had or taken to the manifold errors and insufficiencies of the said answer of the said defendant, for replication thereunto say they will aver, maintain, and prove their said bill to be true, certain, and sufficient
92 to be answered unto by the said defendant, and that the said answer is untrue, uncertain, and insufficient to be replied unto by these repleants without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto by these repleants, confessed and avoided, traversed or denied, is true; all which matters and things these repleants are and will be ready to aver, maintain, and prove, as this court shall direct, and humbly pray as in and by their said bill they have already prayed.

CARY & PRATT, *Compl'ts' Sol'rs.*

And afterwards, on the 16th day of May, 1860, depositions received from the post office and filed

And afterwards, on the 17th day of May, 1860, came the parties, by their counsel, and J. A. Helfenstein, one of the parties, defendant not being ready for the hearing of this cause on this day, and objecting to said hearing, it is thereupon ordered by the court that the order heretofore made for the final hearing on this day be, and hereby is, rescinded, complainants' counsel objecting thereto; and the motion and rule of the complainants for the appointment of a receiver came on to be heard and was argued by the counsel of the complainants and by the counsel of Selah Chamberlain, one of the defendants.

Answer of Wolstenholme.

And on the same day came James Wolstenholme, by his counsel,
94 and on his application it is ordered by the court that he be, and hereby is, permitted to become a party defendant. Whereupon he filed his answer by Finches, Lynde & Miller, his solicitors, as follows, viz:

District court of the United States for the district of Wisconsin, in equity.

The several answer of James Wolstenholme, one of the defendants, to the bill of complaint of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees.

This defendant saving and reserving to himself all benefit of exception, &c., for answer to the said bill of complaint, answering, admits that the said La Crosse and Milwaukee Railroad Company executed and delivered to the said complainants the said deeds of trust, dated, respectively, the 31st day of

December, A. D. 1856, and the 28th day of January, A. D. 1858, as alleged in the said complaint. And this defendant further admits that the said several bonds issued by the said La Crosse and Milwaukee Railroad Company under the said first-mentioned mortgage or deed of trust were registered and countersigned by the said trustees at the times and for the numbers mentioned in the said Schedule C, attached to the said bill of complaint, and charges that the same were not issued, negotiated, or transferred by the said company until after said respective times, and that prior to the judgment hereinafter mentioned only 1,991 of the said bonds had been actually is-
95 sued by said company. And this defendant states that heretofore, and on or about the sixth day of January, A. D. 1858, in the United States district court for the district of Wisconsin, by the consideration and judgment of the said court this defendant recovered against the said La Crosse and Milwaukee Railroad Company a judgment for the sum of six hundred and thirty-eight dollars and fifty-five cents for the damages he had sustained by reason of the non-performance of certain promises and undertakings, and for his costs and charges about his suit in that behalf expended, which was adjudged to this defendant in and by the said court, as by the record of the said judgment in the office of the clerk of the said court will more fully and at large appear. And this defendant further states that the said judgment so recovered as aforesaid remains in full force and effect, unpaid and unsatisfied, and is and remains a lien upon all the real estate within the said district at that time or since held and owned by the said La Crosse and Milwaukee Railroad Company. And this defendant shows that at the rendition of the said judgment as aforesaid, bonds under the said trust deed specified in the said bill of complaint, numbered from 1 to 2500, inclusive, had been registered and countersigned by the said trustees, and no more, as
96 appears from the said schedule marked C, attached to this bill of complaint. And this defendant insists that all bonds registered and countersigned by the said complainants and issued by the said La Crosse and Milwaukee Railroad Company subsequent to the date of the rendition of the said judgment of this defendant as aforesaid, are a lien subsequent to the lien of this defendant on the property mentioned and described in the said trust deed or mortgage. And this defendant prays that in all proceedings hereafter to be had in this suit he may be protected in the priority of his said lien as aforesaid.

JAMES WOLSTENHOLME,
By FINCHES, LYNDE & MILLER,
Solicitors.

JAMES S. BROWN, *of Counsel.*

Replication to answer of Wolstenholme.

And on the same day came the complainants, by their solicitors, and filed their replication to the said answer, as follows, viz:

Before the judge of the district court of the United States for the district of Wisconsin, in equity.

The replication of Greene C. Bronson, James T. Soutter, and Shepherd, Knapp, trustees, &c., complainants, to the separate answer of James Wolstenholme, impleded with others.

These repliants now and at all times hereafter saving and reserv-
97 ing to themselves all and all manner of benefit or advantage of exception that may be had or taken to the manifold errors and insufficiencies of the said answer of the said defendant, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true,

certain, and sufficient for the said defendant to make answer unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing in the said answer contained material or effectual to be replied unto by these repliants, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed, or denied, is true; all which matters and things these complainants are ready to maintain and prove as this court shall direct, and humbly pray as in and by their said bill they have already prayed.

CARY & PRATT, *Compl'ts' Sol'rs.*

Amended answer—Helfenstein.

And afterwards, on the 18th day of May, 1860, came J. A. Helfenstein, one of the defendants, by his counsel, and on his motion it is ordered by the court that he have leave to file an amendment to his answer, the same not extending thereby the time for final hearing of this case. And amended answer filed as follows, to wit:

98 District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, SHEPHERD KNAPP, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Francis J. Blair, Edmund R. Persons, and others. } Amended answer.

The said defendant, J. Albert Helfenstein, trustee, by the leave of the court amends his answer to the bill of complaint in this cause by adding to his separate answer on file therein, and further answering to said bill of complaint as follows:

This defendant, upon information and belief, shows to the court that at the time the said trust deed, mentioned in the said bill of complaint, a copy whereof is annexed thereto and marked Schedule "B," was made and executed as in said bill of complaint set forth, no part of the line of railroad in the said deed of trust described, from Madison, by way of Portage City to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse, had been constructed,

99 nor was the same then in existence or in process of construction, nor had the said company acquired the right of way for such line of road, nor did said company, at the time of the execution of the said trust deed, own the land now occupied by the line of said road, and on which so much of said road as extends from Portage City to La Crosse has since been constructed; and this defendant submits and insists that the said mortgage or deed of trust is not a valid lien or incumbrance upon the said line of road or any part thereof. And this defendant, further answering, shows to the court that he is informed and believes that of the issue of bonds provided for in the said trust deed only nineteen hundred and ninety-one of the said bonds, amounting nominally to nineteen hundred and ninety-one thousand dollars, were actually issued and disposed of by the said La Crosse and Milwaukee Railroad Company prior to the execution and delivery of the trust deed to this defendant, as in his former answer set forth, and the issue and disposal of the bonds thereunder issued and thereby secured and now outstanding; and that, as he is informed and believes, the remainder of the four millions of bonds issued under the said trust deed and the instrument

supplementary thereto, also set forth in the bill of complaint, were issued and disposed of by the said La Crosse and Milwaukee Railroad Company subsequent to the making of the said trust deed to this defendant and
100 the issue of the bonds thereunder.

And this defendant further answers that he is informed and believes, and upon his information and belief states, that about seven hundred and seventy-five of the bonds issued under the said trust deed in the bill of complaint set forth, amounting nominally to about seven hundred and seventy-five thousand dollars, were issued and disposed of by the said company before the line of road west of Portage City, or between Madison and Portage City, embraced in said deed of trust, was commenced or in process of construction; and that, in addition thereto, and prior to the first day of October, 1857, and prior to the making of the said trust deed to this defendant, and the issue of bonds thereunder, no more than twelve hundred and sixteen thousand dollars of said bonds were issued and made use of by the said company, and that of said last-mentioned twelve hundred and sixteen thousand dollars of said bonds, many of them were negotiated and disposed of by said company at merely nominal rates, and greatly below their par value; and that all of the remaining bonds constituting the said sum of four millions of dollars, that is to say, the sum of two millions nine thousand dollars, were issued and disposed of by said company at merely nominal rates, and in some instances without any consideration whatever, and that none
101 of said latter amounts were disposed of by said company at rates exceeding thirty cents on the dollar, and that the whole of said sum of two million nine thousand dollars of said bonds were issued by said company subsequent to the first day of October, 1857, and subsequent to the making and delivery of the said trust deed to this defendant, and to the issue and disposal by said company of the bonds issued under and secured by the said last-mentioned trust deed.

And this defendant further answers that he is informed and believes that of said four million dollars of bonds the sum of one million five hundred thousand dollars were issued and disposed of by said company after the 28th day of January, A. D. 1858, and after the making and delivery of the indenture in the said bill of complaint mentioned, and a copy whereof is annexed to said bill of complaint, and marked Schedule "D," and pursuant to the provisions of the said trust deed, and the said supplemental indenture; and that the same, or a great share thereof were disposed of by a majority of the board of directors of the said company within a short time after the said 28th January, A. D 1858, at prices not to exceed thirty cents on the dollar, and he is informed and believes a large share of said bonds were sold by
102 the said company to persons who were then directors of the said company, and at prices greatly below their then market value, and this defendant submits and insists that the issue and disposal of the said *of the said* one million and five hundred thousand dollars of said bonds was in fraud of the rights of the stockholders and creditors of said company, and in fraud of the rights of the holders and owners of the bonds issued and disposed of by said company under the trust deed executed and delivered to this defendant as aforesaid, and are void.

J. A. HELFENSTEIN.

PALMER & STARK,
BUTLER, BUTTUCK & COTTREL, *Att'y f. Def't.*
H. L. PALMER,
A. R. R. BUTLER, *of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

Be it remembered, that on the 18th day of May, A. D. 1860, before me per-

sonally appeared J. Albert Helfenstein, who being by me duly sworn, did make oath and say that he had heard read the foregoing amended answer subscribed by him, and that he knew the contents thereof, and that the same are true of his own knowledge, except as to the matters therein stated to be on information and belief, and that as to those matters he believes it to be true.

J. M. MILLER,
Clerk U. S. Dist. Court, Wis.

103 *Appointment of receiver.*

103a And on the same day the rule and motion of the complainants for the appointment of a receiver in this cause having been argued by Mr. Potter, for the complainants, and by Mr. Lynde and Mr Emmons, for the defendant Chamberlain, and submitted. On consideration whereof, it was ordered and decreed, and this court doth order and adjudge, that the said complainants, or such one of them as they may select, be, and he or they are hereby appointed receiver as hereinafter mentioned, and be at once put into possession of the mortgaged property; but in case said com-
103b plainants, or either of them, decline to act as such receiver, then on filing such refusal, signed by them or their counsel, it is hereby further ordered that Hans Crocker be, and he hereby is, appointed receiver, (in their stead,) of all and singular the railroad from Madison, by way of Portage City to St. Croix River or Lake, and from Portage City to La Crosse, mentioned in the bill of complaint, with all and singular the furniture, fixtures, and appurtenances, engine-houses, workshops, depots, and other buildings and improvements, engines, cars, rolling stock, materials, equipments, tools, implements, utensils, and all and singular the personal property, rights, liberties, privileges, and franchises of the said railroad company relating to said road, or which have been procured for or used in connection therewith, or either of them, and all other the property, rights, and effects, franchises, and interest mentioned in the said deed of trust to the complainants, which this action is brought to enforce.

And it is further ordered that the said trustees, or such one of them as may accept, and if not, then that the said Hans Crocker, before entering on his duties as such receiver, shall give a bond, with sureties to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditioned that they or he will duly manage and conduct said railroad and mortgaged property, and for what he shall receive shall duly file inventories, and also file under oath, every month, accounts of his receipts and disbursements, in accordance with the rules and practice and direction of this court.

And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said trustees, or such of them as they shall elect to act as receiver; and in case they decline to so act, then to the said Hans Crocker as such receiver, all and singular the said railroad, from Madison to Portage city, and from Portage City to La Crosse, and all other the real estate and premises in said deed of trust to complainants mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances, and other personal property which belonged to the La Crosse and Milwaukee Railroad Company on the 31st day of December, 1856, or at any time thereafter, which may have been procured for or used in connection with said mortgaged premises, or any thereof, which may have come to the hands of the said defendants, respectively, or over which they have control; and that such receiver
103c take possession thereof, and take directly, or by such agent as may be for that purpose by such receiver duly appointed, the care, possession,

management, direction, and control of all such property, and all the income to be had and received from the running, possession, and operation and use of the said railroad and property in anywise, and out of the same pay the expenses of the said receivership and this application, and the costs and expenses of operating and maintaining or preserving and keeping said railroad, and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order and direction of this court

And it is further ordered that the said receiver, and any other party in interest in this suit, have leave from time to time to apply to this court for such further directions in respect to such property, and the management and proceeds thereof, as may be just and may be required.

And afterwards, on the 4th day of June, 1860, came the complain-
104 ants, by their solicitors, and filed their replication to the amended answer of J. A. Helfenstein, as follows, viz:

Before the judge of the district court of the United States, for the district of Wisconsin, in equity.

The replication of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, complainants, to the amended answer of J. Albert Helfenstein, trustee one of the defendants, impleaded with others.

These repliants saving and reserving to themselves all and all manner of benefit or advantage of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the said amended answer of the said defendants, for replication thereunto say that they will ever maintain and prove their said bill of complaint to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the said amended answer of the said defendant is uncertain, untrue, and insufficient in the law to be replied unto by there replicants, without this, that any other matter or thing in the said amended answer contained not herein and hereby well and sufficiently replied unto, confessed, and avoided, tra-
105 versed or denied is true, all which matters and things these repliants are and will be ready to maintain and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

CARY & PRATT, *Compl'ts' Solr's.*

And afterwards, on the 7th day of June, 1860, came the complainants, by their counsel, Mr. Cary, and decline to act as receiver by virtue of the order of this court made on the 18th May last, as by their declination in writing filed as follows, viz:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, *et al.*, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*

The above-named Greene C. Bronson, James T. Soutter, and Shepherd Knapp, by Cary & Pratt, their counsel, hereby decline to act as receiver in this cause by virtue of the order of this court made on the 18th day of May, A. D. 1860.

May, 26, 1860.

CARY & PRATT,
Solr's and of counsel for complainants.

106 And on the same day the official bond of Hans Crocker as receiver approved and filed, which said bond is as follows, viz:

Know all men by these presents that we, Hans Crocker as principal, and Alexander Mitchell, Elephalet Cramer, all of the city of Milwaukee, and State of Wisconsin, are held and firmly bound unto the United States of America for the use of all whom it may concern in the penal sum of fifty thousand dollars, lawful money of the United States of America, to be paid to the said obligee, for which payment, well and truly to be made, we and each of us bind ourselves, respectively, and our respective heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated the 26th day of May, A. D. 1860.

Whereas by an order of the district court of the United States for the district of Wisconsin, in equity, bearing date the 18th day of May, A. D. 1860, made in a cause pending therein, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp are complainants, and the La Crosse and Milwaukee Railroad Company and others are defendants, the said Hans Crocker was duly appointed the receiver of all and singular the railroad of the La Crosse and Milwaukee Railroad Company from Madison, by way of Portage City, to St. Croix River or Lake, and from Portage City to La Crosse,
mentioned in the bill of complaint, with all and singular the furniture,
107 fixtures and appurtenances, engine-houses, work-shops, cars, rolling stock, materials, equipments, tools, implements, utensils, and all and singular the personal property, rights, liberties, privileges, and franchises of the said company relating to said roads, or which have been procured for or used in connection therewith or either of them:

Now, therefore, the condition of this obligation is such that if the above-bounden Hans Crocker shall and do under the rules and practice of said court duly file his inventory, and monthly, and oftener if thereunto required, duly account for what he shall have received or had in charge as receiver in the said cause, and pay and apply what he shall receive or have in charge as he may from time to time be ordered or directed by said court, and do and perform his office of receiver in all things according to the true intent and meaning of the aforesaid order, then this recognizance to be void; otherwise, in full force and virtue.

H. CROCKER. [SEAL.]
ALEX. MITHCELL. [SEAL.]
E. CRAMER. [SEAL.]

In presence of—
E. IRONS, as to E. Cramer.
J. A. PIRIE, as to Mitcheil and Crocker.

June 7, 1860, this bond and the sureties approved by the court.
A. G. MILLER, *Judge.*

And afterwards, on the 30th day of June, 1860, came Hans Crocker, receiver, and filed his report as follows, to wit:

108 District court of the U. S. for the district of Wisconsin.

GREENE C. BRONSON, SHEPERD KNAPP, AND JAMES T. Soutter
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

To the Hon. Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin:

In my report of this date, in the suit of Sebre Howard against the La Crosse and Miiwaukee Railroad Company and others I have made an exhibit

of the present condition of the eastern division of said road. I now take the liberty of calling your attention to the present condition of the western division, extending from Portage City to La Crosse, one hundred and five miles. It is operated in connection with the eastern division as one road, and is subject to the following charges and incumbrances, to wit:

Funded debt.—Consisting of first and second mortgages, amounting in the aggregate to $4,367,500, with the annual interest of $309,400, of which there is now in arrear the sum of $630,500.

Real estate and depot grounds.—At La Crosse the depot grounds and buildings stand in the name of Selah Chamberlain, and mechanics' leins
109 exist upon depot buildings at other points on the line of this division of the road. To acquire title to the grounds and buildings at La Crosse, and to extinguish the other leins will require not less than $17,000.

Right of way.—Twenty-two miles of right of way yet to be procured on this division will require from $15,000 to $25,000.

Fencing.—No fencing has been done on this division. It is estimated that the entire line from Portage City to La Crosse will cost $67,200.

Rolling stock.—The mortgagees on the eastern division claim that the entire rolling stock now in use upon the line of road belongs to and is covered exclusively by the several mortgages upon that division. Without expressing any opinion as to that claime, I have to report that, from the best information I can obtain, a large increase of rolling stock is necessary for the opperation of the entire line of road in order to move the property and transport the passengers over this great thoroughfare.

The estimate for the purpose is as follows, for 200 house freight cars and 10 locomotive engines $230,000.

The incumbrances and liabilities of this division, and from the first and second mortgages are as follows:

110	Interest in arrear	630,500
	" due 1 Aug., 60, 1st m't'g	140,000
	" " 1 Oct., 60, 2d m't'g	14,700
Right of way, estimated		20,000
Depot grounds and buildings		17,000
Fencing		67,200
		889,400

The suggestions made in regard to right of way, depot grounds and fencing, contained in the report refered to upon the eastern division are equally applicable to this section of the road, with the still further embarrassment that while the amount required for right of way, depots and depot grounds, and fencing on this division exceeds one hundred thousand dollars, there is no well-founded hope that the nett earnings of that division will meet their absolute requirements.

Postponing all reference to the earningt and opperating expenses till the close of the month, I submit the foregoing for the consideration of your honor, and respectfully ask such orders and directions as will enable me to protect the property and promote the general interests of the road.

Very respectfully,

H. CROCKER, *Receiver.*

Milwaukee 20 June, 1860.

And afterwards, on the 5th day of July, 1860, depositions received from post office, and filed.

And afterwards, on July 10th, 1860, depositions received from post office, and filed.

And afterwards, on July 7th, 1860, came the receiver and filed his report as follows, viz:

111 RECEIVER'S OFFICE OF THE LA CROSSE AND MILWAUKEE RAILROAD,
July 2d, 1860.

Exhibit of the present condition of the La Crosse and Milwaukee Railroad Co., eastern division.

This section of the road, extending from Milwaukee to Portage City, 95 miles, is subject to the following liabilities, viz:

Funded debt.—Consisting of first mortgage, mortgage to the city of Milwaukee, and the second mortgage, so called, amounting in the aggregate to $2,264,000, subjected to an annual charge of $189,980 for interest and sinking fund for the redemption of $500,000 of the first mortgage bonds.

Real estate incumbrances.—Upon the depot grounds and buildings at Milwaukee there are outstanding mortgages and mechanics' liens amounting in the aggregate to $34,300.

Right of way.—Thirteen miles unsettled for, and remaining to be acquired; estimated cost $15,000.

Fencing.—Thirty-five miles remain to be fenced at an estimated cost of $23,000.

Buildings needed.—A brick blacksmith shop at Milwaukee and fixtures; estimated cost $3,000.

Due on rolling stock.—In August, '59, Mr. Chamberlain, while in possession of the road, purchased 18 house freight and other cars, giving his note therefor, secured by a chattel mortgage upon the cars purchased. There remain to be paid on this purchase, three notes amounting to $9,547 91, which severally mature August 18th, November 18th, 1860, and February 18th, 1861.

Taxes.—In addition to other liens upon depot grounds, many of the lots in Milwaukee are subject to taxes and titles. The amount necessary to settle these claims is uncertain.

The amount of these incumbrances and claims upon the income of this section of the road, now due and to become due before the first of January, '61, may be summed up as follows:

The interest and sinking fund now in arrears amounts to $151,980, and is payable in the following order, viz:

1st. Sinking fund on 1st mortgage, Nov. 1st, 1859	$12,000
2d. Interest on 1st mortgage, due May 1, 1860	38,000
3d. Interest on city of Milwaukee bonds, Sept. 1, '59	10,990
4th. Interest on same, March 1st, 1860	10,990
5th. Interest on 2d mortgage due Sept. 1st, '59	40,000
6th. Interest on same, due March 1, 1860	40,000
	151,980

(It is probable that the sinking fund may be allowed to remain unpaid until the city interest is paid.)

Interest due Sept. 1st, 1860	$50,990	
Do. Nov. 1st, 1860	38,000	
Sinking fund	12,000	
		$252,970
Incumbrances on real estate now due	26,000	
Right of way as estimated	15,000	
Fencing	23,000	

Amount due on Chamberlain's notes, payable this year ..	6, 200	
Blacksmith shop	3, 000	
		73,200
Total, besides tax liens and charges		$326,170

Western division.

Extending from Portage City to La Crosse, 105 miles. It is operated in connection with the eastern division as one road, and is subject to the following charges and incumbrances, viz :

111*a* *Funded debt.*—Consisting of first and second mortgages, amounting in the aggregate to $4,367,500, with an annual interest of $309,400, of which there is now in arrear the sum of $630,500.

Real estate and depot grounds.— At La Crosse the depot grounds and buildings stand in the name of Selah Chamberlain, and mechanics' liens exist upon depot buildings at other stations on the line of this division of the road. To acquire title to the grounds and buildings at La Crosse and to extinguish the other liens will require $17,000.

Right of way.—Twenty-two miles of right of way yet to be secured on this division will require from $15,000 to $25,000.

Fencing.—No fencing has yet been done on this division. It is estimated that the entire line from Portage City to La Crosse will cost $67,200.

The incumbrances and liabilities on this division due and to become due up to 1st January, '61, are as follows :

Interest in arrear	$630, 500	
Interest due 1st August, '60, on 1st mortgage	140, 000	
Interest due 1st October, '60, 2d mortgage	14, 700	
		$785,200
Right of way, estimated, say	20, 000	
Depot grounds and buildings	17, 000	
Fencing, 105 miles	67, 200	
		104,200
Total		$889,400

Looking to the future operations of the road as a complete connected line, it is proper to state that, in addition to the foregoing claims and liabilities, it is necessary that additional rolling stock should be procured without delay, the present equipment being inadequate to the business of the road. It now consists of 23 locomotives, 222 house freight cars, 17 first-class and 2 second-class passenger cars, and 108 platform cars. The Milwaukee and Mississippi road, only 34 miles longer than the La Crosse and Milwaukee, has 32 first-class and 11 second-class locomotives, 30 first-class and 3 second-class passenger cars, 411 house freight and 107 platform cars, being nearly double the equipment possessed by this road. It is true that a large amount of freight was carried over this road, during the past year, with the present equipment, men and rolling stock being employed day and night during the heavy business months of the year. More than two thirds of the grain transported over this road in '59 was carried during the months of September, October, and November. An equipment which might be ample if the business was equally distributed throughout the year, is entirely inadequate to the wants of the road during those months when business is most active. Farmers and dealers are desirous to have their produce forwarded to the eastern market before the close of navigation; consequently a

heavy business is thrown upon the road during the fall months, which, with an inadequate equipment, must be done at great expense, or it must seek some other channel. Should the grain crop of Wisconsin and Minnesota prove as abundant as it now promises, the tonnage to be moved by this road will be materially increased over that of the past year, and with the present equipment it will be impossible to do the business which naturally belongs to the road. Those best acquainted with the prospective wants of the road estimate that a proper equipment of rolling stock for the prompt and economical transportation of freight and passengers, will require 10 locomotives and 200 house freight cars, in addition to those now in use on the road. Mr. Goodrich, the superintendent, while freely concurring in the above estimate, thinks that for the present year three additional locomotives and fifty freight cars will enable the road to perform the service required.

The estimated cost of this additional equipment is $54,000.

The estimate for right of way, I believe to be ample ; but it may be materially increased by the exorbitant demands of owners or the liberality of jurors. At whatever sacrifice, the right of way must be secured, as the laws of the State authorize injunctions to restrain the running of the cars or engines over the lands taken until compensation is made therefor.

An act passed at the last session of the legislature requires all railroads to be fenced by the first of April next, and they are rendered liable for all damages to persons or property by reason of such fences not being constructed as required by that act.

The mortgages upon depot grounds and the mechanics' liens upon buildings should be paid promptly, in order to save expense, and to save the property for the use of the road.

The gross receipts from July 1, '59, to Jan. 1, '60, were $122,677 86. For the corresponding months of the present year they are estimated at $487,667 86, and should the hopes now entertained of the incoming crops be realized, I have no doubt of an increase in gross earnings, during the present year, by the addition of the equipments suggested, equal to the cost of the same.

It will be seen that the claims, liabilities, and expenditures estimated for the eastern division, exclusive of rolling stock, arrears of interest, and the amount to become due for the cars purchased by Mr. Chamberlain, which should be considered as the common property of both divisions, amount to $67,000.

The necessary outlays for the western division, exclusive of rolling stock and claims for interest, amount to $104,200. The net earnings for the whole road for the remainder of the year will probably not exceed $250,000, and the portion applicable to the western division will not exceed $60,000 if the claim made by the bondholders of the eastern division to the exclusive right to the rolling stock is well founded.

The two divisions are operated as one road ; but a detailed account is kept of the business properly belonging to each division, though no distribution of net earnings can be made until the question of the ownership of the rolling stock is first determined.

111*b* I have deemed it my duty to submit the foregoing exhibit, in order that the bondholders and others interested may know the present condition of the road. I have not deemed it necessary to refer to the claims of Mr. Chamberlain, or other creditors, but have confined myself to that class of indebtedness secured by mortgage and mechanics' liens, and to such obligations as the laws referred to compel the managers of the road to regard.

My powers as receiver are limited, and it is questionable how far the court from which I receive my appointment will feel warranted in authoriz-

ing the expenditures I have recommended. They are all necessary to the completion of the road, and a compliance with the law of the State, and unless made, without delay, serious loss may result to the road. If made, the earnings for the present year must be diverted from the interest account, and if the whole of the estimated expenditure is made for the western division, it will exceed the net earnings belonging to that division.

I am clearly of opinion that the true policy requires that the bondholders should forego the payment of any interest until all the claims and liabilities are paid, and the road fully completed and equipped.

The embarrassments attending my position as the receiver of a road which, during my official term, will not probably earn sufficient to enable me to pay the interest on the funded debt, and discharge the claims and liabilities above set forth, leads me to suggest to the bondholders and others the necessity of adjusting all matters in controversy between all parties interested in the road, in order that it may, at the earliest possible day, pass into the hands of the proper owners.

Proceedings have been commenced to foreclose the second mortgage on the eastern division, and the first and 2nd mortgages on the western division. Creditors and parties claiming an interest in the road are resisting these foreclosures. The holders of bonds, under the second mortgage on the western division, are questioning the validity of a portion of the bonds issued under the first mortgage of that division, and a similar question has arisen among the holders of that issue. The determining of these questions by the court will occupy a long time and involve much expense. In the mean while the interests of the road will suffer from the inability of the receiver to meet all the liabilities and obligations devolving upon the road. I repeat again that the interest of the road requires an early settlement of these questions and conflicting rights, a reorganization under the laws of the State, and the formation of a company recognizing the rights of all, according to their respective priorities and equities, which will be enabled successfully to manage this great thoroughfare as one entire line from Milwaukee to La Crosse.

It is proper to say that I have submitted the foregoing exhibit to the judge of the U. S. court, and have asked such order and direction as will enable me to protect the property and promote the interests of the road.

H. CROCKER, *Receiver.*

OFFICE OF THE TRUSTEES OF THE SECOND MORTGAGE BONDHOLDERS
of the La Crosse and Milwaukee Railroad, Milwaukee, July 3, 1860.

The foregoing exhibits and statements of the liens, claims, liabilities, and wants of the separate divisions of this road have been carefully prepared and correctly set forth by the receiver.

No person who understands the condition of the road, and the extent of these liens and requirements, can fail to see that a choice must now be made between purchasing a present income by certain classes of the bondholders, at the expense of the safety of the property and the future value of the road, and the postponement of their interest for a time, for the purpose of securing their property, adding to the permanent value of their respective securities, and increasing the safety of their future income. This postponement will fall chiefly upon the holders of the city bonds and the second mortgage bonds upon the eastern division, the anticipated earnings from this division being only sufficient to provide the payments upon the same, purchase rolling stock, and meet the interest upon the first mortgage bonds. I concur entirely in Mr. Crocker's views as to the propriety of the expenditures upon the eastern division, for which he asks the authority of the court. The probable deficiency in the earnings of the western division, to meet the

absolute necessities of that section of the road, is a subject which commends itself to the consideration of the land grant bondholders, whose permanent interests are involved in securing the real estate now used for depot purposes on that line, the right of way, and the fencing of the track, according to the requirements of law.

The legal complications which are now developing themselves in the opposition to the pending foreclosures, give very great weight to the suggestions of the receiver, that the several interests in both divisions should come together and settle their equities and claims by amicable arrangements.

Delays interposed, and the disadvantages under which a receiver must manage such important operations, will soon destroy all value which creditors outside of the mortgages *might* secure, even if the mortgagees themselves do not hazard something of the value of their securities from the same causes. I recommend that measures be taken to bring all classes interested to an early amicable settlement of their respective claims in order of merit and equity.

P. DOW,
Attorney for the Trustees Second Mortgage.

Order appointing receiver modified.

111*c* July 7, 1860.—This day came the parties by their counsel, and also came Hans Crocker, the receiver, and made his report, from which it appears, among other things, that there are mechanics' liens and mortgages upon the depot buildings and depot grounds of said road; that thirty-five miles of right of way remain to be secured and paid for; that one hundred and forty miles of fencing remain to be completed; that there is due for rolling stock purchased by S. Chamberlain while in possession of the road, and mortgaged by him to the vendor, $9,547 91; that the depot grounds are encumbered with taxes and tax deeds; and further, that there is an immediate necessity for the purchase of at least three locomotive engines and fifty freight box cars. Said report having been submitted by consent; and upon the consideration thereof it is ordered, adjudged, and decreed by the court that the order appointing said receiver be, and is hereby, modified, and the court doth now here order and decree in manner following:

That the said receiver shall have power to bring and maintain any action or actions necessary or proper in order to enable him to execute his du-
111*d* ties, which actions or suits may be brought in the name of the La Crosse and Milwaukee Railroad Company; and in like manner he may defend any action or suit affecting the interests of the said company, so far as may be necessary to protect the property and interests confided to his care, or as may be necessary and proper to enable him to discharge his duties as such receiver.

He shall also have power to compromise and settle all suits or actions that have been or may be brought against said company, so far as may be necessary to protect the property committed to his care, upon such terms and conditions as to him shall seem most advantageous to said railroad or to said company, or other parties interested therein. He shall also have power, and is hereby authorized, to compromise, settle, and discharge all lawful claimis against said company or said road for right of way, liens upon depot grounds or buildings, taxes upon depot grounds, and special liens upon the rolling stock in use upon said road, so far as may be necessary to protect the property of said company. He shall also have power to arbitrate or compromise, on such terms as he shall deem most advantageous to the interests of the road, all claims for damages for detentions or injury to persons or property arising from running or operating said road. The net earnings of the road shall be applied as follows, as far as may be deemed necessary:

To the payment of such sum as shall hereafter become due the State of Wisconsin for license to operate said road by virtue of any law of the State.

To the payment of all sums due operatives and employees of the road, and for materials or supplies furnished said road which have accrued since the first day of April last; but the receiver shall be authorized to pay any proper expenses incurred in the operating or managing of said road previous to that date, provided the same shall not exceed the sum of one thousand dollars.

To the payment of such sums as may be necessary to acquire the title to the right of way and depot grounds now used and occupied by the road.

To the payment of all sums due or that may become due to connecting roads on freight or passenger account in the ordinary course of business.

To the payment of the amount due on three notes given by S. Chamberlain in the month of August, 1859, for part payment on the purchase of freight cars, and which are subject to a chattel mortgage to secure the payment of such notes.

111*e* To the payment of such expenses as may be incurred in fencing so much of the line of road as the receiver may deem necessary.

The said receiver shall have power and authority to purchase such locomotives and freight cars as may be necessary for the business of the road, but not to exceed three locomotives and fifty house freight cars, and at a cost not exceeding fifty-four thousand dollars; and for such portion of the purchase money of such engines and cars as the receiver shall not be able to pay at the time of the purchase or delivery thereof, he may execute to the vendor a chattel mortgage thereon, to secure the payment of such purchase money in arrear.

To the payment of the costs of this suit, including the fees and charges of the solicitors and counsel of the complainants incurred in this foreclosure, or that may be incurred therein, and all necessary expenses that have been or may be incurred in respect thereto, subject to allowance by the court.

The receiver, acting in pursuance of this or any former or of any subsequent order, or decree hereinafter to be made in good faith, and with ordinary care and prudence, shall not be individually liable for any breach of contract entered into by him as such receiver, or for any injury to person or property of the parties or of third persons, or for the faults or negligence of his subordinates, and for his indemnity against or exoneration from any and all such liabilities, should any such occur, the property, money, and effects that shall at any time be in his hands as such receiver shall be bound, and may from time to time, as may be necessary, be applied in such manner as the court shall direct.

112 And afterwards, on the 13th day of July, 1860, came the defendants by their counsel, and on their motion and cause shown, the complainants' counsel not consenting thereto, it is ordered that the time for taking proofs and evidence be, and hereby is, extended to the 2d Saturday of August next.

And afterwards, on the 14th day of July, 1860, came the receiver, and filed his report for the month of June, 1860.

And afterwards, on the 28th day of July, 1860, came the defendant J. Albert Helfenstein, trustee, by his solicitors, and entered in the order and rule-book a rule for a commission, in the words and figures following, to wit:

GREEN C. BRONSON, JAMES T. SOUTTER, AND SHEPherd Knapp, trustees, *vs.* LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, and others.	In equity, July 28, 1860.

On motion of Palmer & Stark, and Butler, Buttrick & Cottrill, solicitors

for the defendant J. Albert Helfenstein, trustee, it is ordered that a commission issue to Alexander Spaulding, of the city of New York, counsellor-at-law, to take the testimony of Seth R. Foster and George H. Broadhead, of New York, witnesses to be produced, sworn, and examined on behalf of the said defendant J. Albert Helfenstein, trustee, upon interrogatories to be annexed to such commission, and that such commission be returned by mail to John M. Miller, esq., clerk of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, Wisconsin, and
113 that the said complainants be at liberty to join in such commission.

Milwaukee, July 28, 1860.

PALMER & STARK, and
BUTLER, BUTTRICK & COTTRILL,
Sol'rs for Def't J. A. Helfenstein.

And also filed interrogatories to be annexed to said commission.

And afterwards, on the 30th day of July, 1860, came the complainants by their solicitors, and filed objections to the said interrogatories, and consent that the commission may issue immediately, with the interrogatories as filed, attached, and commission issued same day.

And afterwards, on the 10th day of August, 1860, depositions received from post office, and filed.

And afterwards, on the 14th day of August, 1860, came the receiver, and filed his report for the month of July, 1860.

114 And on the 16th day of August came Guy Tracy, a citizen of the State of Pennsylvania, and presented his petition in writing as follows, to wit:

United States district court for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The petition of Guy Tracy respectfully showeth that he is a citizen of the State of Pennsylvania; that he is the holder of ten bonds of the La Crosse and Milwaukee Railroad Company, mentioned and described in the bill of complaint in this cause, and set out in Schedule C attached thereto, and numbered from 1 to 2500, inclusive. And your petitioner further shows that said bonds so held by him are issued by said company, for the purpose of aiding on the construction of that portion of their road particularly designated and prescribed by the act of Congress entitled An act granting public lands to aid on the construction of railroads in said State, approved June 3, 1856, and the act of the legislature of the State of Wisconsin, approved October 11, 1856, granting certain lands to the said La Crosse and Milwaukee Railroad Company, and was disposed of by said company at the rate
115 of eight cents upon the dollar of the par value thereof for that purpose. And your petitioner further saith, upon information and belief, that the bonds mentioned in Schedule C, issued on and after the twenty-ninth of January, 1858, and numbered from 2500 to 3950, inclusive, and the bonds for $500 each, and numbered from 1 to 100, were not issued, sold, or used for the purpose authorized or intended by the said acts of Congress and the legislature of Wisconsin, but for altogether distinct and different purposes, and were divided and parcelled among the directors of said company, or some of them, and their personal friends, at and after the rate of 30 per cent. upon the par value thereof, and no more. And the purpose for

which said bonds were issued, and the rate at which they were sold, were matters of public notoriety at the time.

Wherefore your petitioners claim a preferable and superior lien upon said road, and the land to which, under the said acts, the said company is or may be entitled, over the holders of said last-mentioned bonds, and pray for an order of this court, making your petitioner a party to this suit, and that he and others in like case may be adjudged to have a superior lien upon the said property mentioned in the trust deed and mortgage, *said trust deed and mortgage*, over the holders of the said bonds, issued on and after
116 the 29th of January, 1858, or that he may have such other and further relief in the premises as this honorable court shall see fit to grant.

GUY TRACY.

Sworn and subscribed to before me this 13th day of July, 1860.

H. T. HERRICK,

[NOTARIAL SEAL.] *Notary Public, Waverly, New York.*

On consideration whereof it is ordered by the court that the complainants amend their bill by making this petitioner, Guy Tracy, a party defendant, and that all proceedings be stayed in the mean time; and further ordered by the court that said Guy Tracy file his answer within twenty days after notice of such amendment.

And on the same day came J. Albert Helfenstein, one of these defendants, by his counsel, and on his motion, and the affidavit of Edwin L. Buttrick, herein filed, as follows, to wit:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER AND SHEPHERD Knapp,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, and others.

117 DISTRICT OF WISCONSIN, *ss:*

Edwin L. Buttrick, being duly sworn, on his oath saith that he is one of the solicitors for J. Albert Helfenstein, one of the defendants in this action; that said Helfenstein has filed his answer therein, and that by a stipulation therein duly signed by the solicitors for the complainants, and the solicitors for the said Helfenstein, it was agreed that the testimony of S. R. Foster, of the city of New York, and other witnesses in said stipulation named, might be taken upon oral interrogatories, in the city of New York and the city of Albany, before a commissioner of the United States court; that in pursuance of said stipulation this deponent went to the city of New York in the month of June last expressly for the purpose of examining the said Foster and the other witnesses named in said stipulation; that this deponent saw the said Foster in the city of New York, and made two appointments, to which he agreed, to take his, the said Foster's, testimony, neither of which the said Foster kept.

This deponent further says that he also desired to take the testimony of Eli Perry, of the city of Albany, whose name as a witness was also in said stipulation; that he went to Albany for that purpose, and there learned
118 that the said Perry was absent from the city of Albany, and this deponent was unable to obtain his testimony. That after the return of this deponent from New York the solicitors for the said Helfenstein caused a commission to be regularly issued to Alexander Spaulding, of the city of New York, to take the testimony of the said Foster. That this deponent

has been informed by letters received from said Spaulding that he, the said Spaulding, was obliged to go to Saratoga Springs from the city of New York for the purpose of examining the said Foster, and that he did examine the said Foster upon the interrogatories contained in the said commission.

That the answers of said Foster are evasive, and that the evidence sought to be obtained from him his entirely unsatisfactory. That the defendant, Helfenstein, had every reason to believe that he could prove by the said Foster many of the material facts set up in his answer in this cause, but that by reason of said evasion and unsatisfactory evidence, it is necessary for the said Helfenstein to prove the allegations in his answer by other witnesses, who are, as this deponent is informed and believes, cognizant of the same facts. That the commission so issued, as this deponent is informed and believes, was mailed from Saratoga Springs on Wednesday last,
119 and has been within a few days received by the clerk of this court.

That some of the witnesses whom the said Helfenstein desires to examine reside in the State of New York, and that it will be necessary to issue a commission to take their testimony.

EDWIN L. BUTTRICK.

Sworn to and subscribed before me this 14th day of August, 1860.

D. S. KELLY, *Notary Public, Mil. Co., Wis.*

It is ordered by the court that the time for taking proof be extended to the 1st day of November next, and this order is to include all the parties in this cause.

And afterwards, on the 24th day of August, 1860, came the complainants by their solicitors, and filed amendments to the bill of complaint in this cause, as follows:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp, trustees, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.* } In equity.

And now come the said complainants, and in pursuance of an order of this court made in this cause on the 16th day of August, A. D.
120 1860, amend their bill of complaint as follows:

Add to the list of the defendants in the title of the cause the words "and Guy Tracy."

2d. After the words "Great Britain," in the last line of the second page, add the words, "and Guy Tracy, who is a citizen of the State of Pennsylvania."

3d. After the words "Moses M. Davis," in the 26th line from the top of the 21st page, add the words, "and Guy Tracy."

CARY & PRATT, *Compl'ts Sol'rs.*

Endorsement: I hereby admit due service upon me of an amended bill of complaint in the within entitled cause, the same being an incorporation of the within amendments in the original bill.

Milwaukee, Aug. 22, 1860.

JAMES S. BROWN, *Sol. for def't, Guy Tracy.*

September 19th, 1860.—Report of the receiver for the month of August filed.

And afterwards, on the 5th day of October, 1860, came Horace Galpen and Edward Livermore, and presented their several petitions in writing, as follows, viz:

122 United States district court, district of Wisconsin.

GREENE C. BRONSON AND OTHERS, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others. } In chancery.

To the district court for the district of Wisconsin:

The petition of Edward Livermore respectfully sheweth that he was an original subscriber for the bonds of the La Crosse and Milwaukee Company mention in and secured by the original deed of trust set out in Schedule B, attached to the bill of complaint filed in this cause. That after the issue of said bonds he took and paid for twelve thousand dollars of said bonds, in cash, at the rate of eighty cents on the dollar of the par value thereof, besides five per cent. on the certificate of stock attached to the said bonds, and still holds the same. That when he subscribed and paid for said bonds he was informed by the president of said company, as well as by some of the directors and the agents of said company, and believed, that on more than 2,500 of said bonds for $1,000 each, amounts to $2,500,000, would
123 or were to be then issued, and that the proceeds of said issue was to be applied solely to the construction of the land grant portion of said road; that no further issue of said bonds was to be made until after the completion of said La Crosse and Milwaukee railroad to La Crosse, nor without previous notice to the holders of said 2,500 bonds.

And your petitioner further saith that the said La Crosse and Milwaukee railroad premises the route of the land grants from Portage City to Tomah, a distance of about sixty miles, beyond which plan to La Crosse the said road no longer follows the land grant route, but diverges therefrom and forms no part thereof.

And he further saith that after the said road was completed to Tomah, the said railroad company, in violation of the assurances and pledges made at the time of issuing said bonds aforesaid, issued other bonds denominated land grand bonds, under and in furtherance of the instrument set in Schedule D, attached to said bill of complaint, to the amount of $1,500,000, which bonds your petitioner is informed and believes were not in fact ap-
124 plied to the construction of the land grant road or any portion thereof, nor were intended to be applied, and which bonds were sold at rates not higher than thirty per cent. on the par value thereof, and which by the bill of complaint in this cause are sought to be put upon an equal footing as to lien on said road and land with the original issue of said bonds so held by your petitioner, but which, if they have any validity, your petitioner claims should be postponed to the bond so held by him.

Wherefore your petitioner prays that he may be made a party to this suit, and that on the final hearing of this cause the bonds so held by him may be deemed to be a prior lien upon said road, and on the lands granted in aid thereof, or for such other order and relief in the premises as may seem agreeable to equity and good conscience, and your petitioner will ever pray, &c.

EDW. LIVERMORE.

STATE OF NEW YORK,
City and county of New York, ss:

Edward Livermore, the above petitioner, being duly sworn, de-
125 poseth and saith that he has read the foregoing petition, and knows the contents thereof, and that the same are true accounts to his knowledge, information and belief.

EDWARD LIVERMORE.

Subscribed and sworn to this 19th day of September, 1860, before me.

J. B. NONES,
Notary Public of the State of New York, No 262 Broadway.

United States district court, district of Wisconsin.

GREENE C. BRONSON AND OTHERS, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others. } In chancery.

To the district court for the district of Wisconsin:

The petition of Horace Galpen respectfully sheweth that he was an original subscriber for the bonds of the La Crosse and Milwaukee Railroad Company mentioned in and secured by the original deed of trust, set
126 out in Schedule B attached to the bill of complaint filed in this cause. That after the issue of said bonds he took and paid for six thousand dollars of said bonds, in cash, to the said company, at the rate of eighty cents on the dollar of the par value thereof, besides five per cent. on the certificate of stock attached to said bonds, and still holds the same, and upon the faith of the representations of the company hereinafter set forth, he purchased thirty thousand dollars in amount of said bonds, which he now holds. That when he subscribed for and purchased said bonds he was informed by the president of said company and believed that no more than 2,500 of said bonds, amounting to $2,500,000, were to be issued then, and the proceeds thereof were to be applied solely to construction of the land grant portion of said road; that no further issue of said bonds was to be made until after the completion of the said La Crosse and Milwaukee railroad to La Crosse, nor without previous notice to the holders of said 2,500 bonds.

And your petitioner further saith that the said La Crosse and Milwaukee railroad pursues the route of the land grant from Portage City to Tomah, a distance of about sixty miles, beyond which to La Crosse the said
127 road no longer follows the land grant route, but diverges therefrom and forms no part thereof.

And he further saith that after the said road was completed to Tomah the said railroad company, in violation of the assurances and pledges made at the time of issuing said bonds aforesaid, issued other bonds denominated land grant bonds, under and in pursuance of the instrument set out in Schedule D attached to said bill of complaint, to the amount $1,500,000, which bonds, your petitioner is informed and believes, were not in fact applied to the construction of the land grant road or any portion thereof, nor were intended to be so applied, and which were sold at the rates not higher than thirty cents on the dollar on the par value thereof; and which, by the bill of complaint in this cause, are sought to be put upon an equal footing as to lien on said road and land with the original issue of bonds so held by your petitioner, but which, if they have any validity, your petitioner claims should be postponed to the bonds so held by him.

Wherefore, your petitioner prays that he may be made a party to
128 this suit, and that on the final hearing of this cause the bonds so held by him may be deemed to be a prior lien upon said road and the lands granted in aid thereof, or for such other order and relief in the premises as may seem agreeable to equity and good conscience, and your petitioner will ever pray, &c.

HORACE GALPIN.

STATE OF NEW YORK,
City and county of New York, ss:

Horace Galpin, the above petitioner, being duly sworn, deposeth and saith

that he has read the foregoing petition and knows the contents thereof, and that the same are true according to his knowledge, information, and belief.

HORACE GALPIN.

Subscribed and sworn to this 19th day of September, 1860, before me.

J. B. NONES,

Notary Public of the State of New York, No. 262 Broadwaw.

Whereupon, it is ordered by the court that the complainants amend their bill by making the said Horace Galpin and Edward Livermore defend-
129 ants, who shall file their answers within twenty days; and it is further ordered by the court that the time for taking proofs and testimony in this cause be, and hereby is, extended to all the parties until the 15th day of November next.

October 15, 1860.—Report of receiver for month of September filed.

And afterwards, on the 22d day of October, 1860, came the complainants by their solicitors and filed amendments to their bill of complaint in this cause making Horace Galpen and Edward Livermore parties defendant, as follows:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON *et al.*, &c.,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.* } In equity.

And now come the said complainants, and by order of the court amend their bill of complaint as follows, viz:

On the first page of said bill, and on the 25th line of said page, insert "Edward Livermore and Horace Galpen" immediately after "Moses M. Davis."

Immediately after Wisconsin, in line 26, page 2, of said bill, insert "Edward Livermore and Horace Galpen."

130 After "Moses M. Davis," on page 21 and 26, insert "Edward Livermore and Horace Galpen."

CARY & PRATT, *Compl't's Sol'rs.*

And afterwards, on October 29, 1860, came the complainants, by their solicitors, and filed amendments to their bill of complaint, as follows:

U. S. district court.

GREENE C. BRONSON *et al.*,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.* }

And now came the said complainants and amend their bill of complaint by inserting as follows: After "Moses M. Davis," in the 24th line of the 1st page, insert William Crawshay.

After the words "Great Britain," in the 31st line of the second page, insert "William Crawshay, who is a resident of England, and a citizen of the kingdom of Great Brittain and Ireland."

After Moses M. Davis, on the 26th line of the 21st page, insert William Crawshay.

CARY & PRATT, *Compl'ts Sol'rs.*

And same day came the defendants, Guy Tracy, Horace Galpen,
131 and Edward Livermore, and William Crawshay, by their solicitor, Mr. Brown, and filed their answers as follows, viz:

132 District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp, trustees,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The separate answer of Horace Galpen, one of the defendants to the bill of complaint of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees.

This defendant, now and at all times saving and reserving to himself all benefit of exception to the bill of complaint of the said complainants, and answering as well on his own behalf as on behalf of all others interested in common with him as holders and owners of the two thousand five hundred bonds hereinafter mentioned, of the La Crosse and Milwaukee Railroad Company, for one thousand dollars each, and numbered from one to twenty-five hundred, inclusive, for answer to the said bill of complaint, or to such parts thereof as are material or necessary for this defendant to answer unto, answer and say that he admit the statements of the said bill of complaint as to the organization of the La Crosse and Milwaukee Railroad Company, the passage of the acts of Congress and of the legislature of the State of Wisconsin, and the acceptance of the grant thereby conferred on the said railroad company, the construction of the railroad therein mentioned, the execution by the said railroad company of the deeds of trust therein mentioned and set forth in Schedules B and D, attached to the said bill of complaint, the issue by the said railroad company of two thousand five hundred bonds under and secured by the said original trust deed of the 31st day of December, one thousand eight hundred and fifty-six, for one thousand dollars each, numbered from one to two thousand five hundred, inclusive; the sale thereof by the said railroad company, and the failure and neglect of the said railroad company to pay the interest thereon. But this defendant denies that the said railroad company has issued any bonds under or in pursuance of or secured by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, to any greater amount than two and one-half millions of dollars, or other than the said two thousand five hundred bonds for one thousand dollars each, and numbered from one to two thousand five hundred, inclusive.

And this defendant, further answering, says that he is the owner and holder of thirty-six bonds of the said railroad company for one thousand dollars each, being part and parcel of the said two thousand five hundred bonds so secured by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six; that he purchased the same in the year one thousand eight hundred and fifty-seven, and ever since has been and now is the owner and holder thereof.

133 And this defendant, further answering, says that previous to the issuing of the said two thousand five hundred bonds the said railroad company, for the purpose of inducing the purchase of said bonds, represented, by printed circulars and by the personal statements of its officers and agents, that the said bonds so to be issued, and the proceeds thereof, were to, and should, be appropriated and applied exclusively to the construction of that portion of the said railroad company's road known as the Land Grant road, and running from Madison, by way of Portage City, to the St. Croix River or Lake, and to no other purpose, and that no more than two and one half millions of dollars in amount of such bonds would be issued until the completion of the said railroad company's road to La Crosse, nor without notice to the purchasers of the said two and one half millions of dollars of such

bonds, nor should be issued or sold by said railroad company at a less rate than eighty per cent. of the par value thereof.

And this defendant, further answering, says that, relying upon the representations and upon the good faith of the said railroad company in carrying out the same, and in adhering to the provisions of the said trust deed of the 51st day of December, one thousand eight hundred and fifty-six, he purchased the said thirty-six bonds, in the year one thousand eight hundred and fifty-seven.

And this defendant, further answering, says that it is not true that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, the said railroad company was engaged in the construction and completion of that portion of the said road between Portage City and La Crosse; nor is it true that any of the bonds, amounting to one and a half millions of dollars, stated to have been issued on and after the twenty-ninth day of January, one thousand eight hundred and fifty-eight, in said bill of complaint and in Schedule C, annexed thereto, were issued, or the avails thereof used in constructing or completing any part of the said railroad between Portage City and Tomah, called the Junction, or any other portion of the said railroad company's road called the Land Grant road, and provided for in the said acts of Congress and of the legislature of the State of Wisconsin; but on the contrary thereof, the entire construction of the said railroad from Portage City to Tomah was complete and paid for, or provided to be paid for, by and out of the said first above mentioned bonds for two and one half millions of dollars, or the avails thereof, and that the said bonds last mentioned for one and a half millions of dollars were issued, or pretended to be issued, for the express, avowed, and exclusive purpose of constructing the road of the said railroad company from Tomah to La Crosse, as hereinafter more particularly stated; and that the said last-mentioned bonds for one and a half millions of dollars were issued, or pretended to be issued, in violation and fraud of the said acts of Congress and of the legislature of the said State of Wisconsin, and of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and without the knowledge or consent of this defendant, and, as he believes, without the knowledge or consent of any of the holders of the said first above-mentioned two and a half millions of dollars of bonds, and in violation of the said representations of the said railroad company's officers and agents.

And this defendant, further answering, says that after the execution of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and after the issue thereunder by the said railroad company of the said first above-mentioned two and one half millions of dollars of bonds, and before the execution of the said deed of trust of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue of the said additional amount of bonds for one and a half millions of dollars thereunder, the said railroad company, on or about the twenty-sixth day of September, one thousand eight hundred and fifty-seven, had executed and delivered to one J. Albert Hellenstein, and caused to be duly recorded in the office of the secretary of state of the State of Wisconsin a certain deed of trust, bearing date on or about that day, of the same premises, roads, lands, rights, and franchises mentioned in and conveyed by the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, in trust, to secure other bonds of the said railroad company to the amount of one million of dollars, upon certain trusts therein declared, and had issued thereunder and sold bonds secured thereby now outstanding and unpaid, to the amount of three hundred and sixty-eight thousand five hundred dollars; and having prior to and on the twenty-sixth

day of September, one thousand eight hundred and fifty-seven, became insolvent, and unable to pay its debts, had, on or about the day last mentioned, in view of such insolvency and inability, executed and delivered to Selah Chamberlain, in the said bill of complaint mentioned, a certain deed, bearing date on or about the day last mentioned, whereby, amongst other things, the said railroad company had sold and conveyed to the said Selah Chamberlain all its personal property, except such as was appurtenant to a certain other railroad of the said railroad company, called the Watertown division, and had leased and let to the said Selah Chamberlain, for an indefinite term, to be determined as therein specified, its entire railroad and railroad route from the city of Milwaukee to the city of La Crosse, together with all the estate, rights, privileges, appurtenances, and franchises belonging or incident thereto, in trust and upon the terms, amongst other things, that the said Selah Chamberlain should, from the thirtieth day of September, one thousand eight hundred and fifty-seven, and until that agreement should be terminated as therein provided, operate so much of the said railroad as was ready for operation, and from time to time such portions as should be ready, and should keep the said road and rolling stock upon the same in repair, and should receive and appropriate, as therein provided, all receipts or income of the said railroad, and should, when for the interest of said railroad company, buy additional rolling stock, and pay for the same out of the receipts of the said railroad, and should pay the expenses of keeping in repair and operating the said railroad, and should, out of the net receipts, pay, firstly, the interest of a certain mortgage of the said railroad company, commonly called the first eastern mortgage, secondly and thirdly, the interest on certain bonds of the city of Milwaukee, fourthly, the interest of a certain mortgage of the said railroad company commonly called the second eastern mortgage, and fifthly and lastly, should pay certain debts due from the said railroad company to him, the said Selah Chamberlain, and that after the full payment of such debts to the said Selah Chamberlain, he should surrender and re-convey to the said railroad company the premises thereby granted and leased, and had put the said Selah Chamberlain in possession of the premises thereby sold and conveyed and leased and let, which remained from the first day of October, one thousand eight hundred and fifty-eight, until after the exhibiting of the said bill of complaint in the possession of the said Selah Chamberlain, under the said deed last men-

134 tioned, without the full execution of the trusts and terms thereof; which said deed last mentioned made no provision whatever for the payment of any part of the principal or interest of any bonds issued or to be issued under the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six; and had sold and disposed of all its other lines of railroad and property, and had no resources or income available for the payment of any part of the interest to become due on any property, and had no resources or income available for the payment of any part of the interest to become due on any bonds issued or to be issued under the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six; and had suffered judgments to be recovered against it and remain unsatisfied, in this court and in the courts of the State of Wisconsin, to the amount of nearly one million of dollars, which said judgments still remain in full force, unpaid and unsatisfied; and had become, and was, wholly insolvent and unable to pay its debts; and had so managed its affairs that the whole line of railroad then constructed and since constructed and mentioned in and conveyed by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, together with all the lands, property, rights, and franchises applicable under the said deed of trust last mentioned, had become, were, and still are, insufficient and inade-

quate to secure or satisfy the said two and one half millions of dollars of bonds first above-mention-d, and so issued under and secured by the said trust deed last mentioned, and the said bonds, to the amount of three hundred and sixty-eight thousand five hundred dollars, so issued under the said deed of trust to J. A. Helfenstein. And so this defendant says that the said railroad company, before the execution of said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue, or pretended issue, thereunder of the said bonds for one and a half millions of dollars, had parted with and lost all beneficial interest in the premises mentioned therein, and had no right or power further to incumber the same under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, by the further issue of any amount of bonds equal in lien thereunder with the said bonds for two and one half millions of dollars first above mentioned, and that the attempt so to do was in violation and fraud of the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, and was a fraud upon this defendant and all other holders of the said twenty-five hundred bonds issued thereunder, as above mentioned.

And this defendant, further answering, says that the said bonds for one and a half millions of dollars were not issued by or under the authority of the board of directors of the said railroad company, or by or under the authority of any person or persons, officer or officers, authorized to act in that behalf for the said railroad company, but were issued or pretended to be issued by individuals who were directors of the said railroad company, without authority, under pretence of constructing and completing the road of the said railroad company from Tomah to La Crosse; but that in fact the sum of four hundred and fifty thousand dollars only from the proceeds thereof was paid or to be paid for so constructing or completing the same, and that no further or greater sum was in any way realized by the said railroad company, or applied to its use, out of or from the avails of the said last-mentioned bonds for one and a half millions of dollars; that under the false and colorable device and pretence of issuing the same to pay the said Selah Chamberlain, the contractor, for completing and constructing the road last mentioned, the said bonds last mentioned were in effect surreptitiously obtained and taken by certain of the directors, who sold the same, and who agreed among themselves to account and in fact accounted for the same at the rate of only thirty per cent. of the par value thereof, whereas in fact they sold the same, or a great part thereof, at a greater rate; that the said price or cost of four hundred and fifty thousand dollars for so completing and constructing the said road last mentioned was an extravagant over price therefor; that the same was not worth more than two hundred thousand dollars; and that the whole transaction was a fraudulent collusion between directors of the said railroad company and the said contractor to realize dishonest profits at the expense of diminishing the security of the existing incumbrances on the premises conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, to the amount of nearly or quite one and a quarter millions of dollars.

And this defendant, further answering, says that no more of the lines of railroad provided by or contemplated in the said acts of Congress and the legislature of the State of Wisconsin has ever been constructed than the said railroad from Portage City to Tomah; and this defendant denies that the said railroad company had the right or power to issue the said bonds for one and a half millions of dollars in the manner and for the purposes hereinbefore state, as charges or liens under the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six; that at the time of

the execution of the said deed of trust last mentioned, and of the issue thereunder of the said bonds for two and a half millions of dollars, the lands to be acquired by the said railroad company by the due expenditure of the avails thereof, were represented by the said railroad company and generally reported to be of the value of ten millions of dollars, and formed in fact a principal basis of the credit of the said deed of trust and of the bonds issued thereunder; that the application of the avails of the said deed of trust to objects securing to the said railroad company the title of such lands was a material and principal provision of the said deed of trust, without which this defendant and, as he believes, no other persons would have been willing to purchase bonds issued thereunder; that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and of the issue thereunder of the said bonds for one and a half millions of dollars, the said railroad company had, by the extravagant and fraudulent administration of its affairs, became and was wholly unable to construct any of the residue of the said lines of road under the acts of Congress and of the legislature of the State of Wisconsin, saving and excepting only by such means as it could or might acquire from a further issue of bonds under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, to be devoted exclusively to that purpose, and that the said railroad company had in effect openly abandoned all purpose of constructing any further portion of the said lines of land grant road; and that even if otherwise legal and valid, the issue of the said bonds for one and a half millions of dollars for other and different purposes was in violation and fraud of the deed of trust last mentioned and of the liens and rights acquired thereunder.

And this defendant, further answering, says that prior to and at the time of the issue of the said bonds for one and a half millions of dollars all of the facts herein stated relating to the said railroad company, its contracts, operations, and condition, were public and notorious, well understood by all persons interested in or dealing with the said railroad company or its securities, and, as this defendant believes and alleges, to all persons purchasing or holding any of the said bonds for one and a half millions of dollars, and certainly so easily to be ascertained that any person of ordinary prudence intending to purchase any of such bonds would have learned them.

And this defendant, further answering, says and insists that the said deed of trust of the twenty-eight day of January, one thousand eight hundred and fifty-eight, has no legal or equitable validity to impair the rights acquired before its execution by this defendant and others, by the purchase of bonds, part of the said first issue of two and a half millions of dollars, or to change the general scope and policy of the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, on the faith of which this defendant and others became purchasers of bonds issued thereunder; and that if the said bonds for one and a half millions of dollars, or any of them, should be held to have any legal validity, and to have or constitute any legal or equitable lien on the premises conveyed by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, such lien is not equal with the lien of the said bonds of this
135 defendant, or any of the said first issue of two thousand five hundred bonds for the aggregate of two and a half millions of dollars, but is subsequent and subordinate thereto.

And this defendant insists that the decree in this cause should declare and establish the amount of the said first issue of bonds numbered from one to two thousand five hundred, inclusive, and amounting to two and a half

millions of dollars, as the first lien on the premises mentioned in and conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, paramount and prior to all other amounts and liens thereon.

JAMES S. BROWN,
Sol'r and counsel for d'f't Galpen.

136 District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The separate answer, of Guy Macy, one of the defendants to the bill of complaint of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees.

This defendant now and at all times saving and reserving to himself all benefit of exception to the bill of complaint of the said complainants, and answering as well on his own behalf as on behalf of all others interested in common with him, as holders and owners of the two thousand five hundred bonds hereinafter mentioned, of the La Crosse and Milwaukee Railroad Company, for one thousand dollars each, and numbered from one to twenty-five hundred, inclusive, for answer to the said bill of complaint, or to such parts thereof as are material or necessary for this defendant to answer unto, answer and say that he admit the statements of the said bill of complaint as to the organization of the La Crosse and Milwaukee Railroad Company, the passage of the acts of Congress and of the legislature of the State of Wisconsin, and the acceptance of the grant thereby conferred on the said railroad company, the construction of the railroad therein mentioned, the execution by the said railroad company of the deeds of trust therein mentioned and set forth in Schedules B and D, attached to the said bill of complaint, the issue by the said railroad company of two thousand five hundred bonds under and secured by the said original trust deed of the 31st day of December, one thousand eight hundred and fifty-six, for one thousand dollars each, numbered from one to two thousand five hundred, inclusive; the sale thereof by the said railroad company, and the failure and neglect of the said railroad company to pay the interest thereon. But this defendant denies that the said railroad company has issued any bonds under or in pursuance of or secured by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, to any greater amount than two and one half millions of dollars, or other than the said two thousand five hundred bonds, for one thousand dollars each, and numbered from one to two thousand five hundred, inclusive.

And this defendant, further answering, says that he is a citizen of the State of Pennsylvania, and now resident therein, and that he is the owner and holder of ten bonds of the said railroad company, for one thousand dollars each, being part and parcel of the said two thousand five hundred bonds so secured by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, and numbered, respectively, two hundred and ninety-one, three hundred and twenty-two, six hundred and seventy, seven hundred and sixty-two, eleven hundred and forty-five, eleven hundred and forty-six, thirteen hundred and fifty-five, two thousand one hundred and sixteen, two thousand one hundred and eighty, and two thousand two hundred and seventy-nine; and that he became the owner thereof

before the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and ever since has been and now is the owner and holder thereof.

137 And this defendant, further answering, says that previous to the issuing of the said two thousand five hundred bonds, the said railroad company, for the purpose of inducing the purchase of said bonds, represented, by printed circulars and by the personal statements of its officers and agents, that the said bonds so to be issued and the proceeds thereof were to and should be appropriated and applied exclusively to the construction of that portion of the said railroad company's road known as the land grant road, and running from Madison, by way of Portage City, to the St. Croix River or Lake, and to no other purpose, and that no more than two and one half millions of dollars in amount of such bonds would be issued until the completion of the said railroad company's road to La Crosse, nor without notice to the purchasers of the said two and one half millions of dollars of such bonds, nor should be issued or sold by said railroad company at a less rate than eighty per cent. of the par value thereof.

And this defendant, further answering, says that, relying upon the said representations and upon the good faith of the said railroad company, in carrying out the same, and in adhearing to the provisions of the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, he became the purchaser of the said ten bonds in the year one thousand eight hundred and fifty-seven.

And this defendant, further answering, says that it is not true that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, the said railroad company was engaged in the construction and completion of that portion of the said road between Portage City and La Crosse; nor is it true that any of the bonds amounting to one and a half millions of dollars, stated to have been issued on and after the twenty-ninth day of January, one thousand eight hundred and fifty-eight, in the said bill of complaint and in Schedule C annexed thereto, were issued, or the avails thereof used in constructing or completing any part of the said railroad between Portage City and Tomah, called the Junction, or any other portion of the said railroad company's road called the land grant road, and provided for in the said acts of Congress and of the legislature of the State of Wisconsin; but, on the contrary thereof, the entire construction of the said railroad from Portage City to Tomah was completed and paid for, or provided to be paid for, by and out of the said first above-mentioned bonds for two and one half millions of dollars, or the avails thereof; and that the said bonds last mentioned for one and a half millions of dollars were issued, or pretended to be issued, for the express, avowed, and exclusive purpose of constructing the road of the said railroad company from Tomah to La Crosse, as hereinafter more particularly stated; and that the said last mentioned bonds for one and a half millions of dollars were issued, or pretended to be issued, in violation and fraud of the said acts of Congress, and of the legislature of the said State of Wisconsin, and of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and without the knowledge or consent of this defendant, and, as he believes, without the knowledge or consent of any of the holders of the said first above mentioned two and a half millions of dollars of bonds, and in violation of the said representations of the said railroad company's officers and agents.

And this defendant, further answering, says that after the execution of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and after the issue thereunder, by the said railroad company, of the said first above-mentioned two and one half millions of dollars of

bonds, and before the execution of the said deed of trust of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue of the said additional amount of bonds for one and a half million of dollars thereunder, the said railroad company, on or about the twenty-sixth day of September, one thousand eight hundred and fifty-seven, had executed and delivered to one J. Albert Helfenstein, and caused to be duly recorded in the office of the secretary of state of the State of Wisconsin, a certain deed of trust, bearing date on or about that day, of the same premises, roads, lands, rights, and franchises, mentioned in and conveyed by the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, in trust to secure other bonds of the said railroad company to the amount of one million of dollars, upon certain trusts therein declared, and had issued thereunder and sold bonds secured thereby, now outstanding and unpaid, to the amount of three hundred and sixty-eight thousand five hundred dollars; and having prior to and on the twenty-sixth day of September, one thousand eight hundred and fifty-seven, became insolvent and unable to pay its debts, had, on or about the day last mentioned, in view of such insolvency and inability, executed and delivered to Selah Chamberlain, in the said bill of complaint mentioned, a certain deed, bearing date on or about the day last mentioned, whereby, amongst other things, the said railroad company had sold and conveyed to the said Selah Chamberlain, all its personal property, except such as was appurtenant to a certain other railroad of the said railroad company, called the Watertown division, and had leased and let to the said Selah Chamberlain, for an indefinite term, to be determined as therein specified, its entire railroad and railroad route from the city of Milwaukee to the city of La Crosse, together with all the estate, rights, privileges, appurtenances, and franchises belonging or incident thereto, in trust and upon the terms, amongst other things, that the said Selah Chamberlain should, from the thirtieth day of September, one thousand eight hundred and fifty-seven, and until that agreement should be terminated as therein provided, operate so much of the said railroad as was ready for operation, and from time to time such portions as should be ready, and should keep the said road and rolling stock upon the same in repair, and should receive and appropriate as therein provided all receipts or income of the said railroad, and should, when for the interest of said railroad company, buy additional rolling stock, and pay for the same out of the receipts of the said railroad, and should pay the expenses of keeping in repair and operating the said railroad, and should, out of the net receipts pay, firstly, the interest on a certain mortgage of the said railroad company, commonly called the first eastern mortgage; secondly and thirdly, the interest on certain bonds of the city of Milwaukee; fourthly, the interest of a certain mortgage of the said railroad company, commonly called the second eastern mortgage; and fifthly and lastly, should pay certain debts due from the said railroad company to him, the said Selah Chamberlain, and that after the full payment of such debts to the said Selah Chamberlain he should surrender and reconvey to the said railroad company the premises thereby granted and leased, and had put the said Selah Chamberlain in possession of the premises thereby sold and conveyed and leased and let, which remained from the first day of October, one thousand eight hundred and fifty-eight, until after the exhibiting of the said bill of complaint in the possession of the said Selah Chamberlain, under the said
138 deed last mentioned, without the full execution of the trusts and terms thereof; which said deed last mentioned made no provision whatever for the payment of any part of the principal or interest of any bonds issued or to be issued under the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six; and had sold and

disposed of all its other lines of railroad and property, and had no resources or income available for the payment of any part of the interest to become due on any property, and had no resources or income available for the payment of any part of the interest to become due on any bonds issued or to be issued under the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six; and had suffered judgments to be recovered against it and remain unsatisfied in this court and in the courts of the State of Wisconsin, to the amount of nearly one million of dollars, which said judgments still remain in full force, unpaid and unsatisfied; and had become and was wholly insolvent and unable to pay its debts; and had so managed its affairs that the whole line of railroad then constructed and since constructed and mentioned in and conveyed by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, together with all the lands, property, rights, and franchises applicable under the said deed of trust last mentioned had become, were, and still are insufficient and inadequate to secure or satisfy the said two and one half millions of dollars of bonds first above mentioned, and so issued under and secured by the said trust deed last mentioned, and the said bonds to the amount of three hundred and sixty-eight thousand five hundred dollars so issued under the said deed of trust to J. A. Helfenstein. And so this defendant says that the said railroad company, before the execution of said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue thereunder of the said bonds for one and a half millions of dollars, had parted with and lost all beneficial interest in the premises mentioned therein, and had no right or power further to incumber the same under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, by the further issue of any amount of bonds equal in lien thereunder with the said bonds for two and one half millions of dollars first above mentioned, and that the attempt so to do was in violation and fraud of the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, and was a fraud upon this defendant and all other holders of the said twenty-five hundred bonds issued thereunder as above mentioned.

And this defendant, further answering, says that the said bonds for one and a half millions of dollars were not issued by or under the authority of the board of directors of the said railroad company, or by or under the authority of any person or persons, officer or officers, authorized to act in that behalf for the said railroad company, but were issued or pretended to be issued by individuals who were directors of the said railroad company, without authority, under pretence of constructing and completing the road of the said railroad company from Tomah to La Crosse; but that in fact the sum of four hundred and fifty thousand dollars only from the proceeds thereof was paid or to be paid for so constructing or completing the same, and that no further or greater sum was in any way realized by the said railroad company or applied to its use, out of or from the avails of the said last-mentioned bonds for one and a half millions of dollars; that under the false and colorable device and pretence of issuing the same to pay the said Selah Chamberlain, the contractor, for completing and constructing the road last mentioned, the said bonds last mentioned were in effect surreptitiously obtained and taken by certain of the directors, who sold the same, and who agreed among themselves to account, and in fact accounted, for the same at the rate of only thirty per cent. of the par value thereof, whereas in fact they sold the same or a great part thereof at a greater rate; that the said price or cost of four hundred and fifty thousand dollars for so completing and constructing the said road last mentioned was an extravagant over price therefor; that the same was not worth more than two hundred thou-

sand dollars; and that the whole transaction was a fraudulent collusion between directors of the said railroad company and the said contractor to realize dishonest profits at the expense of diminishing the security of the existing incumbrances on the premises conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, to the amount of nearly or quite one and a quarter millions of dollars.

And this defendant, further answering, says that no more of the lines of railroad provided by or contemplated in the said acts of Congress and the legislature of the State of Wisconsin has ever been constructed than the said railroad from Portage City to Tomah; and this defendant denies that the said railroad company had the right or power to issue the said bonds for one a half millions of dollars in the manner and for the purposes hereinbefore stated, as charges or liens under the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six; that at the time of the execution of the said deed of trust last mentioned, and of the issue thereunder of the said bonds for two and a half millions of dollars, the lands to be acquired by the said railroad company by the due expenditure of the avails thereof, were represented by the said railroad company and generally reported to be of the value of ten millions of dollars, and formed in fact a principal basis of the credit of the said deed of trust and of the bonds issued thereunder; that the application of the avails of the said deed of trust to objects securing to the said railroad company the title of such lands was a material and principal provision of the said deed of trust, without which this defendant and, as he believes, no other persons would have been willing to purchase bonds issued thereunder; that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and of the issue thereunder of the said bonds for one and a half millions of dollars, the said railroad company had by the extravagant and fraudulent administration of its affairs became and was wholly unable to construct any of the residue of the said lines of road under the acts of Congress and of the legislature of the State of Wisconsin, saving and excepting only by such means as it could or might acquire from a further issue of bonds under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, to be devoted exclusively to that purpose, and that the said railroad company had in effect openly abandoned all purpose of constructing any further portion of the said lines of land grant road; and that even if otherwise legal and valid, the issue of the said bonds for one and a half millions of dollars for other and different purposes was in violation and fraud of the deed of trust last mentioned and of the liens and rights acquired thereunder.

And this defendant, further answering, says that prior to and at the time of the issue of the said bonds for one and a half millions of dollars, all of the facts herein stated relating to the said railroad company, its contracts, operations, and condition, were public and notorious, well understood by all persons interested in or dealing with the said railroad company or its securities, and, as this defendant believes and alleges, to all persons purchasing or holding any of the said bonds for one and a half millions of dollars, and certainly so easily to be ascertained that any person of ordinary prudence intending to purchase any of such bonds would have learned them.

And this defendant, further answering, says and insists that the said deed of trust of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, has no legal or equitable validity to impair the rights acquired before its execution by this defendant and others, by the purchase of bonds, part of the said first issue of two and a half millions of dollars, or to change the general scope and policy of the said trust deed of the thirty-

first day of December, one thousand eight hundred and fifty-six, on the faith of which this defendant and others became purchasers of bonds issued thereunder; and that if the said bonds for one and a half millions of dollars, or any of them, should be held to have any legal validity, and to have or constitute any legal or equitable lien on the premises conveyed by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, such lien is not equal with the lien of the said bonds of
139 this defendant or any of the said first issue of two thousand five hundred bonds for the aggregate of two and a half millions of dollars, but is subsequent and subordinate thereto.

And this defendant insists that the decree in this cause should declare and establish the amount of the said first issue of bonds, numbered from one to two thousand five hundred, inclusive, and amounting to two and a half millions of dollars, as the first lien on the premises mentioned in and conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, paramount and prior to all other amounts and liens thereon.

JAMES S. BROWN,
Sol'r and of counsel for def'd't Tracy.

140 District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The separate answer of William Crawshay, one of the defendants, to the bill of complaint of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees:

This defendant now and at all times saving and reserving to himself all benefit of exception to the bill of complaint of the said complainants, and answering as well on his own behalf as on behalf of all others interested in common with him as holders and owners of the two thousand five hundred bonds hereinafter mentioned, of the La Crosse and Milwaukee Railroad Company, for one thousand dollars each, and numbered from one to twenty-five hundred, inclusive, for answer to the said bill of complaint, or to such parts thereof as are material or necessary for this defendant to answer unto, answer and say that he admit the statements of the said bill of complaint as to the organization of the La Crosse and Milwaukee Railroad Company, the passage of the acts of Congress and of the legislature of the State of Wisconsin, and the acceptance of the grant thereby conferred on the said railroad company, the construction of the railroad therein mentioned, the execution by the said railroad company of the deeds of trust therein mentioned and set forth in Schedules B and D, attached to the said bill of complaint, the issue by the said railroad company of two thousand five hundred bonds under and secured by the said original trust deed of the 31st day of December, one thousand eight hundred and fifty-six, for one thousand dollars each, numbered from one to two thousand five hundred inclusive; the sale thereof by the said railroad company, and the failure and neglect of the said railroad company to pay the interest thereon. But this defendant denies that the said railroad company has issued any bonds under or in pursuance of or secured by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, to any greater amount than two and one half millions of dollars, or

other than the said two thousand five hundred bonds for one thousand dollars each, and numbered from one to two thousand five hundred, inclusive.

And this defendant, further answering, says that he is a subject of the queen of Great Britain and Ireland, a resident in the kingdom of England, not a citizen of the United States, but an alien therein, and that he is the holder and owner of eighty-eight bonds of the said railroad company for one thousand dollars each, being part and parcel of the said two thousand five hundred bonds so secured by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, and numbered respectively, one thousand and seventy-three to eleven hundred, inclusive, and eleven hundred and seventy-five to eleven hundred and eighty-four, inclusive, and thirteen hundred and sixty-nine to fourteen hundred and eighteen, inclusive; and that he became the owner thereof some time in the summer of the year one thousand eight hundred and fifty-seven, and ever since has been and now is the owner and holder thereof.

141 And this defendant, further answering, says that previous to the issuing of the said two thousand five hundred bonds, the said railroad company, for the purpose of inducing the purchase of said bonds, represented, by printed circulars and by the personal statements of its officers and agents, that the said bonds so to be issued and the proceeds thereof were to and should be appropriated and applied exclusively to the construction of that portion of the said railroad company's road known as the land grant road, and running from Madison by way of Portage City, to the St Croix River or Lake, and to no other purpose, and that no more than two and one half millions of dollars in amount of such bonds would be issued until the completion of the said railroad company's road to La Crosse, nor without notice to the purchasers of the said two and one half millions of dollars of such bonds, nor should be issued or sold by said railroad company at a less rate than eighty per cent. of the par value thereof.

And this defendant, further answering, says that relying upon the said representations and upon the good faith of the said railroad company in carrying out the same, and in adhering to the provisions of the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, he became the purchaser of the said eighty eight bonds in the summer of eighteen hundred and fifty-seven, as hereinbefore stated.

And this defendant, further answering, says that it is not true that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, the said railroad company was engaged in the construction and completion of that portion of the said road between Portage City and La Crosse; nor is it true that any of the bonds amounting to one and a half millions of dollars, stated to have been issued on and after the twenty-ninth day of January, one thousand eight hundred and fifty-eight, in the said bill of complaint and in Schedule C annexed thereto, were issued or the avails thereof used in constructing or completing any part of the said railroad between Portage City and Tomah, called the Junction, or any other portion of the said railroad company's road called the land grant road, and provided for in the said acts of Congres and of the legislature of the State of Wisconsin; but, on the contrary thereof, the entire construction of the said railroad from Portage City to Tomah was complete and paid for or provided to be paid for by and out of the said first above-mentioned bonds for two and one half millions of dollars or the avails thereof; and that the said bonds last mentioned for one and a half millions of dollars were issued or pretended to be issued for the express, avowed, and exclusive purpose of constructing the road of the said railroad company from Tomah to La Crosse, as hereinafter more particularly stated; and that the said last-mentioned bonds for one and a half millions of dollars were

issued or pretended to be issued in violation and fraud of the said acts of Congress and of the legislature of the said State of Wisconsin, and of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and without the knowledge or consent of this defendant, and, as he believes, without the knowledge or consent of any of the holders of the said first above mentioned two and a half millions of dollars of bonds, and in violation of the said representations of the said railroad company's officers and agents.

And this defendant, further answering, says that after the execution of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and after the issue thereunder, by the said railroad company of the said first above mentioned two and one half millions of dollars of bonds, and before the execution of the said deed of trust of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue of the said additional amount of bonds for one and a half million of dollars thereunder, the said railroad company, on or about the the twenty-sixth day of September, one thousand eight hundred and fifty-seven, had executed and delivered to one J. Albert Helfenstein, and caused to be duly recorded in the office of the secretary of state of the State of Wisconsin, a certain deed of trust, bearing date on or about that day, of the same premises, roads, lands, rights, and franchises mentioned in and conveyed by the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, in trust to secure other bonds of the said railroad company, to the amount of one million of dollars, upon certain trusts therein declared, and had issued thereunder and sold bonds secured thereby, now outstanding and unpaid, to the amount of three hundred and sixty-eight thousand five hundred dollars; and having prior to and on the twenty-sixth day of September, one thousand eight hundred and fifty-seven, became insolvent and unable to pay its debts, had, on or about the day last mentioned, in view of such insolvency and inability, executed and delivered to Selah Chamberlain, in the said bill of complaint mentioned, a certain deed bearing date on or about the day last mentioned, whereby, amongst other things, the said railroad company had sold and conveyed to the said Selah Chamberlain all its personal property, except such as was appurtenant to a certain other railroad of the said railroad company, called the Watertown division, and had leased and let to the said Selah Chamberlain, for an indefinite term, to be determined as therein specified, its entire railroad and railroad route from the city of Milwaukee to the city of La Crosse, together with all the estate, rights, privileges, appurtenances, and franchises belonging or incident thereto, in trust and upon the terms, amongst other things, that the said Selah Chamberlain should, from the thirtieth day of September, one thousand eight hundred and fifty-seven, and until that agreement should be terminated as therein provided, operate so much of the said railroad as was ready for operation, and from to time such portions as should be ready, and should keep the said road and rolling stock upon the same in repair, and should receive and appropriate as therein provided all receipts or income of the said railroad, and should, when for the interest of the said railroad company, buy additional rolling stock, and pay for the same out of the receipts of the said railroad, and should pay the expenses of keeping in repair and operating the said railroad, and should out of the net receipts pay, firstly, the interest on a certain mortgage of the said railroad company, commonly called the first eastern mortgage; secondly and thirdly, the interest on certain bonds of the city of Milwaukee; fourthly, the interest of a certain mortgage of the said railroad company, commonly called the second eastern mortgage; and fifthly and lastly, should pay certain debts due from the said railroad company to him, the said Selah Chamberlain, and that

after the full payment of such debts to the said Selah Chamberlain he should surrender and reconvey to the said railroad company the premises thereby granted and leased, and had put the said Selah Chamberlain in possession of the premises thereby sold and conveyed, and leased and let, which remained from the first day of October, one thousand eight hundred and fifty-eight, until after the exhibiting of the said bill of complaint in the possession of the said Selah Chamberlain, under the said deed last
142 mentioned, without the full execution of the trust and terms thereof, which said deed last mentioned made no provision whatever for the payment of any part of the principal or interest of any bonds issued or to be issued under the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, and had sold and disposed of all its other lines of railroad and property, and had no resources or income available for the payment of any part of the interest to become due on any property, and had no resources or income available for the payment of any part of the interest to become due on any bonds issued or to be issued under the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six; and had suffered judgments to be recovered against it and remain unsatisfied in this court and in the courts of the State of Wisconsin, to the amount of nearly one million of dollars, which said judgments still remain in full force, unpaid, and unsatisfied; and had become and was wholly insolvent and unable to pay its debts; and had managed its affairs that the whole line of railroad then constructed and since constructed and mentioned in and conveyed by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, together with all the lands, property, rights, and franchises applicable under the said deed of trust last mentioned had become, were, and still are insufficient and inadequate to secure or satisfy the said two and a half millions of dollars of bonds first above mentioned, and so issued under and secured by the said trust deed last mentioned, and the said bonds to the amount of three hundred and sixty-eight thousand five hundred dollars so issued under the said deed of trust to J. A. Helfenstein. And so this defendant says that the said railroad company, before the execution of said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue thereunder of the said bonds for one and a half millions of dollars, had parted with and lost all beneficial interest in the premises mentioned therein, and had no right or power further to encumber the same under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, by the further issue of any amount of bonds equal in lien thereunder with the said bonds for two and one half millions of dollars first above mentioned, and that the attempt so to do was in violation and fraud of the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, and was a fraud upon this defendant and all other holders of the said twenty-five hundred bonds issued thereunder as above mentioned.

And this defendant, further answering, says that the said bonds for one and a half millions of dollars were not issued by or under the authority of the board of directors of the said railroad company, or by or under the authority of any person or persons, officer or officers, authorized to act in that behalf for the said railroad company, but were issued or pretended to be issued by individuals who were directors of the said railroad company, without authority, under pretence of constructing and completing the road of the said railroad company from Tomah to La Crosse; but that in fact the sum of four hundred and fifty thousand dollars only from the proceeds thereof was paid or to be paid for so constructing or completing the same, and that no further or greater sum was in any way realized by the said railroad company or applied to its use, out of or from the avails of the said last-

mentioned bonds for one and a half millions of dollars; that under the false and colorable device and pretence of issuing the same to pay the said Selah Chamberlain, the contractor for completing and constructing the road last mentioned the said bonds last mentioned were in effect surreptitiously obtained and taken by certain of the directors, who sold the same, and who agreed among themselves to account, and in fact accounted, for the same at the rate of only thirty per cent. of the par value thereof, whereas in fact they sold the same or a great part thereof at a greater rate; that the said price or cost of four hundred and fifty thousand dollars for so completing and constructing the said road last mentioned was an extravagant over price therefor; that the same was not worth more than two hundred thousand dollars; and that the whole transaction was a fraudulent collusion between directors of the said railroad company and the said contractor to realize dishonest profits at the expense of diminishing the security of the existing incumbrances on the premises conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, to the amount of nearly or quite one and a quarter millions of dollars.

And this defendant, further answering, says that no more of the lines of railroad provided by or contemplated in the said acts of Congress and the legislature of the State of Wisconsin has ever been constructed than the said railroad from Portage City to Tomah; and this defendant denies that the said railroad company had the right or power to issue the said bonds for one and a half millions of dollars in the manner and for the purposes hereinbefore stated, as charges or liens under the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six; that at the time of the execution of the said deed of trust last mentioned, and of the issue thereunder of the said bonds for two and a half millions of dollars, the lands to be acquired by the said railroad company by the due expenditure of the avails thereof were represented by the said railroad company and generally reported to be of the value of ten millions of dollars, and formed in fact a principal basis of the credit of the said deed of trust and of the bonds issued thereunder; that the application of the avails of the said deed of trust to objects securing to the said railroad company the title of such lands was a material and principal provision of the said deed of trust, without which this defendant and, as he believes, no other persons would have been willing to purchase bonds issued thereunder; that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and of the issue thereunder of the said bonds for one and a half millions of dollars, the said railroad company had by the extravagant and fraudulent administration of its affairs became and was wholly unable to construct any of the residue of the said lines of road under the acts of Congress and of the legislature of the State of Wisconsin, saving and excepting only by such means as it could or might acquire from a further issue of bonds under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, to be devoted exclusively to that purpose, and that the said railroad company had in effect openly abandoned all purpose of constructing any further portion of the said lines of land grant road; and that even if otherwise legal and valid, the issue of the said bonds for one and a half millions of dollars for other and different purposes was in violation and fraud of the deed of trust last mentioned and of the liens and rights acquired thereunder.

And this defendant, further answering, says that prior to and at the time of the issue of the said bonds for one and a half millions of dollars, all of the facts herein stated relating to the said railroad company, its contracts, operations, and condition, were public and notorious, well understood by all

persons interested in or dealing with the said railroad company or its securities, and, as this defendant believes and alleges, to all persons purchasing or holding any of the said bonds for one and a half millions of dollars, and certainly so easily to be ascertained that any person of ordinary prudence intending to purchase any of such bonds, would have learned them.

And this defendant, further answering, says and insists that the said deed of trust of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, has no legal or equitable validity to impair the rights acquired before its execution by this defendant and others, by the purchase of bonds, part of the said first issue of two and a half millions of dollars, or to change the general scope and policy of the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, on the faith of which this defendant and others became purchasers of bonds issued thereunder; and that if the said bonds for one and a half millions of dollars, or any of them, should be held to have any legal validity, and to have or constitute any legal or equitable lien on the premises conveyed by the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, such lien is not equal with the lien of the said
142 bonds of this defendant or any of the said first issue of two thousand five hundred bonds for the aggregate of two and a half millions of dollars, but is subsequent and subordinate thereto.

And this defendant insists that the decree in this cause should declare and establish the amount of the said first issue of bonds, numbered from one to two thousand five hundred, inclusive, and amounting to two and a half millions of dollars, as the first lien on the premises mentioned in and conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, paramount and prior to all other amounts and liens thereon.

JAMES S. BROWN,
Sol'r and of counsel for df't Crawshay.

144 District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The separate answer of Edward Livermore, one of the defendants to the bill of complaint of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees:

The defendant now and at all times saving and reserving to himself all benefit of exception to the bill of complaint of the said complainants, and answering as well on his own behalf as on behalf of all others interested in common with him as holders and owners of the two thousand five hundred bonds hereinafter mentioned, of the La Crosse and Milwaukee Railroad Company, for one thousand dollars each, and numbered from one to twenty-five hundred, inclusive, for answer to the said bill of complaint, or to such parts thereof as are material or necessary for this defendant to answer unto, answer and say that he admit the statement of the said bill of complaint as to the organization of the La Crosse and Milwaukee Railroad Company, the passage of the acts of Congress and of the legislature of the State of Wisconsin, and the acceptance of the grant thereby conferred on the said railroad company, the construction of the railroad therein mentioned, the execution by the said railroad company of the deeds of trust therein mentioned

and set forth in Schedules B and D, attached to the said bill of complaint, the issue by the said railroad company of two thousand five hundred bonds under and secured by the said original trust deed of the 31st day of December, one thousand eight hundred and fifty-six, for one thousand dollars each, numbered from one to two thousand five hundred, inclusive; the sale thereof by the said railroad company, and the failure and neglect of the said railroad company to pay the interest thereon. But this defendant denies that the said railroad company has issued any bonds under or in pursuance of or secured by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, to any greater amount than two and one half millions of dollars, or other than the said two thousand five hundred bonds for one thousand dollars each, and numbered from one two thousand five hundred inclusive.

And this defendant, further answering, says that he is the owner and holder of twelve bonds of the said railroad company for one thousand dollars each, being part and parcel of the said two thousand five hundred bonds so secured by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, and numbered respectively sixty-five, sixty-six, sixty-seven, three hundred and sixty-one, five hundred and fifty-five, five hundred and fifty-nine, five hundred and sixty, nine hundred and two, nine hundred and three, nine hundred and four, nine hundred and five, and nine hundred and six; that he purchased the same previous to the month of July, one thousand eight hundred and fifty-seven, and ever since has been, and still is the owner and holder thereof.

145 And this defendant, further answering, says that previous to the issuing of the said two thousand five hundred bonds the said railroad company, for the purpose of inducing the purchase of said bonds, represented, by printed circulars and by the personal statements of its officers and agents, that the said bonds so to be issued, and the proceeds thereof, were to and should be appropriated and applied exclusively to the construction of that portion of the said railroad company's road known as the land grant road, and running from Madison, by way of Portage City, to the St. Croix River or Lake, and to no other purpose, and that no more than two and one half millions of dollars in amount of such bonds would be issued until the completion of the said railroad company's road to La Crosse, nor without notice to the purchasers of the said two and one half millions of dollars of such bonds, nor should be issued or sold by said railroad company at a less rate than eighty per cent. of the par value thereof.

And this defendant, further answering, says that relying upon the said representations, and upon the good faith of the said railroad company, in carrying out the same, and in adhering to the provisions of the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, he purchased the said twelve bonds from the said railroad company, and paid therefore in cash at the rate of eighty per cent. of the par value thereof to the said railroad company at the time before stated.

And this defendant, further answering, says that it is not true that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, the said railroad company was engaged in the construction and completion of that portion of the said road between Portage City and La Crosse; nor is it true that any of the bonds amounting to one and a half millions of dollars, stated to have been issued on and after the twenty-ninth day of January, one thousand eight hundred and fifty-eight, in the said bill of complaint and in Schedule C annexed thereto, were issued, or the avails thereof used in constructing or completing any part of the said railroad between Portage City and Tomah, called the Junction, or any other portion of the said railroad company's road

called the land grant road, and provided for in the said acts of Congress and of the legislature of the State of Wisconsin; but, on the contrary thereof, the entire construction of the said railroad from Portage City to Tomah was complete and paid for, or provided to be paid for, by and out of the said first above-mentioned bonds for two and one half millions of dollars, or the avails thereof; and that the said bonds last mentioned for one and a half millions of dollars were issued or pretended to be issued for the express, avowed, and exclusive purpose of constructing the road of the said railroad company from Tomah to La Crosse, as hereinafter more particularly stated; and that the said last-mentioned bonds for one and a half millions of dollars were issued, or pretended to be issued, in violation and fraud of the said acts of Congress and of the legislature of the said State of Wisconsin, and of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and without the knowledge or consent of this defendant, and, as he believes, without the knowledge or consent of any of the holders of the said first above mentioned two and a half millions of dollars of bonds, and in violation of the said representations of the said railroad company's officers and agents.

And this defendant, further answering, says that after the execution of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and after the issue thereunder, by the said railroad company, of the said first above mentioned two and one half millions of dollars of bonds, and before the execution of the said deed of trust of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue of the said additional amount of bonds for one and a half million of dollars thereunder, the said railroad company, on or about the twenty-sixth day of September, one *one* thousand eight hundred and fifty-seven, had executed and delivered to one J. Albert Helfenstein, and caused to be duly recorded in the office of the secretary of state of the State of Wisconsin, a certain deed of trust, bearing date on or about that day, of the same premises, roads, lands, rights, and franchises mentioned in and conveyed by the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, in trust to secure other bonds of the said railroad company to the amount of one million of dollars, upon certain trusts therein declared, and had issued thereunder and sold bonds secured thereby now outstanding and unpaid, to the amount of three hundred and sixty-eight thousand five hundred dollars; and having prior to and on the twenty-sixth day of September, one thousand eight hundred and fifty-seven, became insolvent and unable to pay its debts, had, on or about the day last mentioned, in view of such insolvency and inability, executed and delivered to Selah Chamberlain in the said bill of complaint mentioned, a certain deed, bearing date on or about the day last mentioned, whereby, amongst other things, the said railroad company had sold and conveyed to the said Selah Chamberlain all its personal property except such as was appurtenant to a certain other railroad of the said railroad company, called the Watertown division, and had leased and let to the said Selah Chamberlain, for an indefinite term, to be determined as therein specified, its entire railroad and railroad route from the city of Milwaukee to the city of La Crosse, together with all the estate, rights, privileges, appurtenances, and franchises belonging or incident thereto, in trust and upon the terms, amongst other things, that the said Selah Chamberlain should, from the thirtieth day of September, one thousand eight hundred and fifty-seven, and until that agreement should be terminated as therein provided, operate so much of the said railroad as was ready for operation, and from time to time such portions as should be ready, and should keep the said road and rolling stock upon the same in repair, and should receive and appropriate as therein provided all receipts or income of the said railroad, and should, when for the interest of said railroad

company, buy additional rolling stock, and pay for the same out of the receipts of the said railroad, and should pay the expenses of keeping in repair and operating the said railroad and should out of the net receipts pay, firstly, the interest on a certain mortgage of the said railroad company, commonly called the first eastern mortgage; secondly and thirdly, the interest on certain bonds of the city of Milwaukee; fourthly, the interest of a certain mortgage of the said railroad company, commonly called the second eastern mortgage, and fifthly and lastly, should pay certain debts due from the said railroad company to him, the said Selah Chamberlain, and that after the full payment of such debts to the said Selah Chamberlain, he should surrender and reconvey to the said railroad company the premises thereby granted and leased, and had put the said Selah Chamberlain in possession of the premises, thereby sold and conveyed, and leased and let, which remained from the first day of October, one thousand eight hundred and fifty-eight, until after the exhibiting of the said bill of complaint in the possession of the said Selah Chamberlain, under the said deed last mentioned
146 without the full execution of the trusts and terms thereof; which said deed last mentioned made no provision whatever for the payment of any part of the principal or interest of any bonds issued or to be issued under the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six; and had sold and disposed of all its other lines of railroad and property, and had no resources or income available for the payment of any part of the interest to become due on any property, and had no resources or income available for the payment of any part of the interest to become due on any bonds issued or to be issued under the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six; and had suffered judgments to be recovered against it and remain unsatisfied, in this court and in the courts of the State of Wisconsin, to the amount of nearly one million of dollars, which said judgments still remain in full force unpaid and unsatisfied; and had become and was wholly insolvent and unable to pay its debts; and had so managed its affairs that the whole line of railroad then constructed and since constructed and mentioned in and conveyed by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, together with all the lands, property, rights, and franchises applicable under the said deed of trust last mentioned had become were, and still are, insufficient and inadequate to secure or satisfy the said two and one half millions of dollars of bonds first above mentioned, and so issued under and secured by the said trust deed last mentioned, and the said bonds to the amount of three hundred and sixty-eight thousand five hundred dollars so issued under the said deed of trust to J. A. Helfenstein. And so this defendant says that the said railroad company, before the execution of said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue thereunder of the said bonds for one and a half millions of dollars, had parted with and lost all beneficial interest in the premises mentioned therein, and had no right or power further to incumber the same under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, by the further issue of any amount of bonds equal in lien thereunder with the said bonds for two and one half millions of dollars first above mentioned, and that the attempt so to do was in violation and fraud of the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, and was a fraud upon this defendant and all other holders of the said twenty-five hundred bonds issued thereunder as above mentioned.

And this defendant, further answering, says that the said bonds for one and a half millions of dollars were not issued by or under the authority of the board of directors of the said railroad company, or by or under the authority

of any person or persons, officer or officers, authorized to act in that behalf for the said railroad company, but were issued or pretended to be issued by individuals who were directors of the said railroad company, without authority, under pretence of constructing and completing the road of the said railroad company from Tomah to La Crosse; but that in fact the sum of four hundred and fifty thousand dollars only from the proceeds thereof was paid or to be paid for so constructing or completing the same, and that no further or greater sum was in any way realized by the said railroad company or applied to its use, out of or from the avails of the said last-mentioned bonds for one and a half millions of dollars; that under the false and colorable device and pretence of issuing the same to pay the said Selah Chamberlain, the contractor for completing and constructing the road last mentioned, the said bonds last mentioned were in effect surreptitiously obtained and taken by certain of the directors who sold the same, and who agreed among themselves to account, and in fact accounted, for the same at the rate of only thirty per cent. of the par value thereof, whereas in fact they sold the same or a great part thereof at a greater rate; that the said price or cost of four hundred and fifty thousand dollars for so completing and constructing the said road last mentioned was an extravagant over price therefor; that the same was not worth more than two hundred thousand dollars; and that the whole transaction was a fraudulent collusion between directors of the said railroad company and the said contractor to realize dishonest profits at the expense of diminishing the security of the existing incumbrances on the premises conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, to the amount of nearly or quite one and a quarter millions of dollars.

And this defendant, further answering, says that no more of the lines of railroad provided by or contemplated in the said acts of Congress and the legislature of the State of Wisconsin has ever been constructed than the said railroad from Portage City to Tomah; and this defendant denies that the said railroad company had the right or power to issue the said bonds for one and a half millions of dollars in the manner and for the purposes hereinbefore stated, as charges or liens under the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six; that at the time of the execution of the said deed of trust last mentioned, and of the issue thereunder of the said bonds for two and a half millions of dollars, the lands to be acquired by the said railroad company by the due expenditure of the avails thereof, were represented by the said railroad company and generally reported to be of the value of ten millions of dollars, and formed in fact a principal basis of the credit of the said deed of trust and of the bonds issued thereunder; that the application of the avails of the said deed of trust to objects securing to the said railroad company the title of such lands was a material and principal provision of the said deed of trust, without which this defendant, and, as he believes, no other persons would have been willing to purchase bonds issued thereunder; that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and of the issue thereunder of the said bonds for one and a half millions of dollars, the said railroad company had by the extravagant and fraudulent administration of its affairs became and was wholly unable to construct any of the residue of the said lines of road under the acts of Congress and of the legislature of the State of Wisconsin, saving and excepting only by such means as it could or might acquire from a further issue of bonds under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, to be devoted exclusively to that purpose, and that the said railroad company had in effect openly abandoned all purpose of constructing any further portion of the said lines of land grant

road; and that even if otherwise legal and valid, the issue of the said bonds for one and a half millions of dollars for other and different purposes was in violation and fraud of the deed of trust last mentioned and of the liens and rights acquired thereunder.

And this defendant, further answering, says that prior to and at the time of the issue of the said bonds for one and a half millions of dollars, all of the facts herein stated relating to the said railroad company, its contracts, operations, and condition, were public and notorious, well understood by all persons interested in or dealing with the said railroad company or its securities, and, as this defendant believes and alleges, to all persons purchasing or holding any of the said bonds for one and a half millions of dollars, and certainly so easily to be ascertained, that any person of ordinary prudence intending to purchase any of such bonds, would have learned them.

And this defendant, further answering, says and insists that the said deed of trust of the twenty-eight day of January, one thousand eight hundred and fifty-eight, has no legal or equitable validity to impair the rights acquired before its execution by this defendant and others, by the purchase of bonds, part of the said first issue of two and a half millions of dollars, or to change the general scope and policy of the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, on the faith of which this defendant and others became purchasers of bonds issued thereunder; and that if the said bonds for one and a half millions of dollars, or any of them, should be held to have any legal validity, and to have or constitute any legal or equitable lien on the premises conveyed by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, such lien is not equal with the lien of the said bonds of this
147 defendant or any of the said first issue of two thousand five hundred bonds for the aggregate of two and a half millions of dollars, but is subsequent and subordinate thereto.

And this defendant insists that the decree in this cause should declare and establish the amount of the said first issue of bonds, numbered from one to two thousand five hundred, inclusive, and amounting to two and a half millions of dollars, as the first lien on the premises mentioned in and conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, paramount and prior to all other amounts and liens thereon.

JAMES S. BROWN,
Sol'r and of counsel for def't Livermore.

148 NOVEMBER 12, 1860.

Report of receiver for the month of October, 1860, filed.

And afterwards, on the 14 day of November, 1860, came the complainants, by their solicitor, and filed their replication to the answers of the defendants, Guy Tracy, Horace Galpen, Edward Livermore, and William Crawshay, as follows, viz:

Before the judge of the district court of the United States of America for the district of Wisconsin, in equity.

The replication of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, complainants, to the separate answers of Guy Tracy, and Horace Galpen, two of the defendants, impleaded with the La Crosse and Milwaukee Railroad Company and others.

These repliants now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exception which may be had or taken to the manifold errors, uncertainties, and insufficien-

cies of the said answers of the said defendants, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the said answers are uncertain, untrue, and insufficient in the law to be replied unto by these repliants, without this, that any other matter or thing in the said answers contained material or effectual in the law to be replied unto by these repliants, and not herein well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things these repliants will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

CARY & PRATT, *Compl'ts' Sol'rs.*

149 *Replication to answer of Elw'd Livermore.*

Before the judge of the district court of the United States of America, for the district of Winconsin, in equity.

The replication of Greene C. Bronson, James T. Soutter, and Shepherd Knapp' trustees, complainants, to the separate answer of Edward Livermore one of the defendants, impleaded on the La Crosse and Milwaukee Railroad Company and others.

These repliants now and at all times hereafter saving and reserving to themselves all and all manner of benefit or advantage of exception which may be had or taken to the mainfold errors, uncertanties, and insufficiencies of the said answers of the said defendant, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in the law to be answered unto by the defendant, and that the said answer is uncertain, untrue, and insufficient in the law to be replied unto by these repliants, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto by these repliants and not herein well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have always prayed.

CARY & PRATT,
Compl'ts' Sol'rs.

150 *Replication to answer Crawshay.*

Before the judge of the district court of the United States of America for the district of Wisconsin, in equity.

The replication of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, complainants, to the separate answer of William Crawshay, one of the defendants, impleaded with the La Crosse and Milwaukee Railroad Company and others.

These repliants now and at all times hereafter saving and reserving to themselves all and all manner of benefit or advantage of exception which may be had or taken to the manifest errors and uncertainties, and insufficiencies of the said answer of the said defendant, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the said answer is uncertain, untrue, and insufficient in the law to be replied unto by these repliants, without this, that any other matter or thing in the said answer contained, material and effectual in the

law to be replied unto by these repliants, confessed and avoided, traversed or denied, is true; all which matters or things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

CARY & PRATT,
Compl'ts' Sol'rs.

December 1, 1860, depositions received from post office, and filed.

And afterwards, on the 8th day of December, came the defend-
151 ants by their counsel, and on their motion it is ordered by the court that the time for taking testimony be, and hereby is, extended to either party to the 10th day of January next. It is ordered by the court that this cause be, and hereby is, set down for hearing on the 3d Monday of January next.

And on the same day came Henry G. Gilbert, John Hardy, George W. Berrian, George Strobd, G. R. Van Allen, and James G. Fulton, by their counsel, and by consent filed their answer.

And on the same day came Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Dietz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Reine Martin, R. J. Burton, D. M. Corbett D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Taft, Jonathan P. Hopper, D. L. Kingore, Noah Sturdevant, William H. Fessenden, John L. Sutherland E. Hasket, Derby & Frederick Lerick, by their counsel, and by consent filed their answer.

And came Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Miles Higgenbotham, George Ashly, William Gould, Nathan Marble, Jacob Van Vichten, T. F. Bergen, John J. Vanderbilt, and G. S.
152 Boardman, by their counsel, and by consent filed their answer as follows:

153 *Answer Charles Shepherd and others.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees, } *against.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others. }

The joint and several answer of Charles Shepherd, C. P. Williams, Orville Oddie, John Pemberton, Miles Higgenbotham, George Ashley, Wm. Gould, Matthew Marble, Jacob Van Vitchen, T. F. Bergen, John J. Vanderbilt, G. S. Boardman, of the defendants, to the bill of complaint of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees.

These defendant now and at all times saving and reserving to themselves all benefit of exception to the bill of complaint of the said complainants, and answering as well on their own behalf as on behalf of all others interested in common with them as holders and owners of the two thousand five hundred bonds hereinafter mentioned, of the La Crosse and Milwaukee Railroad Company, for one thousand dollars each, and numbered from one to twenty-five hundred, inclusive, for answer to the said bill of complaint, or to such parts thereof as are material or necessary for this defendant to answer unto, answer and say that he admit the statements of the said bill of complaint as to the organization of the La Crosse and Milwaukee Railroad Company, the passage of the acts of Congress and of the legislature of the State of Wisconsin, and the acceptance of the grant thereby conferred on the said railroad

company, the construction of the railroad therein mentioned, the execution by the said railroad company of the deeds of trust therein mentioned and set forth in Schedules B and D, attached to the said bill of complaint, the issue by the said railroad company of two thousand five hundred bonds under and secured by the said original trust deed of the 31st day of December, one thousand eight hundred and fifty-six, for one thousand dollars each, numbered from one to two thousand five hundred, inclusive; the sale thereof by the said railroad company, and the failure and neglect of the said railroad company to pay the interest thereon. But this defendant denies that the said railroad company has issued any bonds under or in pursuance of or secured by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, to any greater amount than two and one half millions of dollars, or other than the said two thousand five hundred bonds for one thousand dollars each, and numbered from one to two thousand five hundred, inclusive.

And these defendants, further answering, say that they each and severally own the bonds issued by the said La Crosse and Milwaukee Railroad Company provided for and secured by the said deed of trust set out in Schedule B, attached to said bill, which are set opposite their respective names in Schedule A attached to this answer and made a part hereof, the same being a portion of the 2,500 bonds for $1,000 each, issued by said company previous to July 14, 1857.

154 And these defendants, further answering, say that previous to the issuing of the said two thousand five hundred bonds, the said railroad company, for the purpose of inducing the purchase of said bonds, represented, by printed circulars and by the personal statements of its officers and agents, that the said bonds so to be issued, and the proceeds thereof, were to and should be appropriated and applied exclusively to the construction of that portion of the said railroad company's road known as the land grant road, and running from Madison, by way of Portage City, to the St. Croix River or Lake, and to no other purpose, and that no more than two and one half millions of dollars in amount of such bonds would be issued until the completion of the said railroad company's road to La Crosse, nor without notice to the purchasers of the said two and one half millions of dollars of such bonds, nor should be issued or sold by said railroad company at a less rate than eighty per cent. of the par value thereof.

And these defendants, further answering, say that, relying upon the said representations and upon the good faith of the said railroad company in carrying out the same, and in adhering to the provisions of the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, they purchased the said bonds set out in Schedule A, attached hereto.

And these defendants, further answering, say that it is not true that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, the said railroad company was engaged in the construction and completion of that portion of the said road between Portage City and La Crosse; nor is it true that any of the bonds amounting to one and a half millions of dollars, stated to have been issued on and after the twenty-ninth day of January, one thousand eight hundred and fifty-eight, in the said bill of complaint and in Schedule C annexed thereto, were issued or the avails thereof used in constructing or completing any part of the said railroad between Portage City and Tomah, called the Junction, or any other portion of the said railroad company's road called the land grant road, and provided for in the said acts of Congress and of the legislature of the State of Wisconsin; but, on the contrary thereof, the entire construction of the said railroad from Portage City to Tomah was complete and paid for, or provided to be paid for, by and

out of the said first above-mentioned bonds for two and one half millions of dollars or the avails thereof; and that the said bonds last mentioned for one and a half millions of dollars were issued, or pretended to be issued, for the express, avowed, and exclusive purpose of constructing the road of the said railroad company from Tomah to La Crosse, as hereinafter more particularly stated; and that the said last-mentioned bonds for one a half millions of dollars were issued, or pretended to be issued, in violation and fraud of the said acts of Congress and of the legislature of the said State of Wisconsin, and of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and without the knowledge or consent of this defendant, and, as he believes, without the knowledge or consent of any of the holders of the said first above mentioned two and a half millions of dollars of bonds, and in violation of the said representations of the said railroad company's officers and agents.

And these defendants, further answering, say that after the execution of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and after the issue thereunder, by the said railroad company, of the said first above mentioned two and one half millions of dollars of bonds, and before the execution of the said deed of trust of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue of the said additional amount of bonds for one and a half million of dollars thereunder, the said railroad company, on or about the twenty-sixth day of September, one thousand eight hundred and fifty-seven, had executed and delivered to one J. Albert Helfenstein, and caused to be duly recorded in the office of the secretary of state of the State of Wisconsin, a certain deed of trust, bearing date on or about that day, of the same premises, roads, lands, rights, and franchises mentioned in and conveyed by the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, in trust to secure other bonds of the said railroad company, to the amount of one million of dollars, upon certain trusts therein declared, and had issued thereunder and sold bonds secured thereby, now outstanding, and unpaid, to the amount of three hundred and sixty-eight thousand five hundred dollars; and having prior to and on the twenty-sixth day of September, one thousand eight hundred and fifty-seven, became insolvent and unable to pay its debts, had, on or about the day last mentioned, in view of such insolvency and inability, executed and delivered to Selah Chamberlain, in the said bill of complaint mentioned, a certain deed, bearing date on or about the day last mentioned, whereby, amongst other things, the said railroad company had sold and conveyed to the said Selah Chamberlain all its personal property, except such as was appurtenant to a certain other railroad of the said railroad company, called the Watertown division, and had leased and let to the said Selah Chamberlain, for an indefinite term, to be determined as therein specified, its entire railroad and railroad route from the city of Milwaukee to the city of La Crosse, together with all the estate, rights, privileges, appurtenances, and franchises belonging or incident thereto, in trust and upon the terms, amongst other things, that the said Selah Chamberlain should, from the thirtieth day of September, one thousand eight hundred and fifty-seven, and until that agreement should be terminated as therein provided, operate so much of the said railroad as was ready for operation, and from time to time such portions as should be ready, and should keep the said road and rolling stock upon the same in repair, and should receive and appropriate as therein provided all receipts or income of the said railroad, and should, when for the interest of said railroad company, buy additional rolling stock, and pay for the same out of the receipts of the said railroad, and should pay the expenses of keeping in repair and operating the said railroad, and

should, out of the net receipts pay, firstly, the interest on a certain mortgage of the said railroad company, commonly called the first eastern mortgage; secondly and thirdly, the interest on certain bonds of the city of Milwaukee; fourthly, the interest of a certain mortgage of the said railroad company, commonly called the second eastern mortgage, and fifthly and lastly, should pay certain debts due from the said railroad company to him, the said Selah Chamberlain, and that after the full payment of such debts to the said Selah Chamberlain he should surrender and reconvey to the said railroad company the premises thereby granted and leased, and had put the said Selah Chamberlain in possession of the premises thereby sold and conveyed, and leased and let, which remained from the first day of October, one thousand eight hundred and fifty-eight, until after the exhibiting of the said bill of complaint in the possession of the said Selah
155 Chamberlain, under the said deed last mentioned, without the full execution of the trusts and terms thereof; which said deed last mentioned made no provision whatever for the payment of any part of the principal or interest of any bonds issued or to be issued under the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six; and had sold and disposed of all its other lines of railroad and property, and had no resources or income available for the payment of any part of the interest to become due on any property, and had no resources or income available for the payment of any part of the interest to become due on any bonds issued or to be issued under the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six; and had suffered judgments to be recovered against it and remain unsatisfied, in this court and in the courts of the State of Wisconsin, to the amount of nearly one million of dollars, which said judgments still remain in full force, unpaid and unsatisfied; and had become and was wholly insolvent and unable to pay its debts; and had so managed its affairs that the whole line of railroad then constructed and since constructed and mentioned in and conveyed by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, together with all the lands, property, rights and franchises applicable under the said deed of trust last mentioned, had become, were, and still are insufficient and inadequate to secure or satisfy the said two and one half millions of dollars of bonds first above mentioned, and so issued under and secured by the said trust deed last mentioned, and the said bonds to the amount of three hundred ond sixty-eight thousand five hundred dollars so issued under the said deed of trust to J. A. Helfenstein. And so this defendant says that the said railroad company, before the execution of said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue thereunder of the said bonds for one and a half millions of dollars, had parted with and lost all beneficial interest in the premises mentioned therein, and had no right or power further to incumber the same under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, by the further issue of any amount of bonds equal in lien thereunder with the said bonds for two and one half millions of dollars first above mentioned, and that the attempt so to do was in violation and fraud of the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, and was a fraud upon this defendant and all other holders of the said twenty-five hundred bonds issued thereunder as above mentioned.

And these defendants, further answering, say that the said bonds for one and a half millions of dollars were not issued by or under the authority of the board of directors of the said railroad company, or by or under the authority of any person or persons, officer or officers, authorized to act in that behalf

for the said railroad company, but were issued or pretended to be issued by individuals who were directors of the said railroad company, without authority, under pretence of constructing and completing the road of the said railroad company from Tomah to La Cresse; but that in fact the sum of four hundred and fifty thousand dollars only from the proceeds thereof was paid or to be paid for so constructing or completing the same, and that no further or greater sum was in any way realized by the said railroad company or applied to its use, out of or from the avails of the said last-mentioned bonds for one and a half millions of dollars; that under the false and colorable device and pretence of issuing the same to pay the said Selah Chamberlain, the contractor, for completing and constructing the road last mentioned, the said bonds last mentioned were in effect surreptitiously obtained and taken by certain of the directors, who sold the same, and who agreed among themselves to account, and in fact accounted, for the same at the rate of only thirty per cent. of the par value thereof, whereas in fact they sold the same or a great part thereof at a greater rate; that the said price or cost of four hundred and fifty thousand dollars for so completing and constructing the said road last mentioned was an extravagant over price therefor; that the same was not worth more than two hundred thousand dollars; and that the whole transaction was a fraudulent collusion between directors of the said railroad company and the said contractor to realize dishonest profits at the expense of diminishing the security of the existing incumbrances on the premises conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, to the amount of nearly or quite one and a quarter millions of dollars.

And these defendants, further answering, say that no more of the lines of railroad provided by or contemplated in the said acts of Congress and the legislature of the State of Wisconsin has ever been constructed than the said railroad from Portage City to Tomah; and this defendant denies that the said railroad company had the right or power to issue the said bonds for one and a half millions of dollars in the manner and for the purposes hereinbefore stated as charges or liens under the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six; that at the time of the execution of the said deed of trust last mentioned, and of the issue thereunder of the said bonds for two and a half millions of dollars, the lands to be acquired by the said railroad company by the due expenditure of the avails thereof were represented by the said railroad company and generally reported to be of the value of ten millions of dollars, and formed in fact a principal basis of the credit of the said deed of trust and of the bonds issued thereunder; that the application of the avails of the said deed of trust to objects securing to the said railroad company the title of such lands was a material and principal provision of the said deed of trust, without which this defendant and, as he believes, no other persons would have been willing to purchase bonds issued thereunder; that at the time of the execution of the said trust deed of the twenty-eight day of January, one thousand eight hundred and fifty-eight, and of the issue thereunder of the said bonds for one and a half millions of dollars, the said railroad company had by the extravagant and fraudulent administration of its affairs became and was wholly unable to construct any of the residue of the said lines of road under the acts of Congress and of the legislature of the State of Wisconsin, saving and excepting only by such means as it could or might acquire from a further issue of bonds under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, to be devoted exclusively to that purpose, and that the said railroad company had in effect openly abandoned all purpose of constructing any further portion of the said lines of land grant

road; and that even if otherwise legal and valid, the issue of the said bonds for one and a half millions of dollars for other and different purposes was in violation and fraud of the deed of trust last mentioned and of the liens and rights acquired thereunder.

And these defendants, further answering, say that prior to and at the time of the issue of the said bonds for one and a half millions of dollars, all of the facts herein stated relating to the said railroad company, its contracts, operations, and condition, were public and notorious, well understood by all persons interested in or dealing with the said railroad company or its securities, and, as this defendant believes and alleges, to all persons purchasing or holding any of the said bonds for one and a half millions of dollars, and certainly so easily to be ascertained that any person of ordinary prudence intending to purchase any of such bonds would have learned them.

And these defendants, further answering, say and insist that the said deed of trust of the twenty-eight day of January, one thousand eight hundred and fifty-eight, has no legal or equitable validity to impair the rights acquired before its execution by this defendant and others, by the purchase of bonds, part of the said first issue of two and a half millions of dollars, or to change the general scope and policy of the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, on the faith of which this defendant and others became purchasers of bonds issued thereunder; and that if the said bonds for one and a half millions of dollars, or any of them, should be held to have any legal validity, and to have or constitute any legal or equitable lien on the premises conveyed by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty six, such lien is not equal with the lien of the said bonds of this defendant or any of
156 the said first issue of two thousand five hundred bonds for the aggregate of two and a half million of dollars, but is subsequent and subordinate thereto.

And these defendants insists that the decree in this cause should declare and establish the amount of the said first issue of bonds, numbered from one to two thousand five hundred inclusive, and amounting to two and a half millions of dollars, as the first lien on the premises mentioned in and conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, paramount and prior to all other amounts and liens thereon.

JAMES S. BROWN, *Sol'r for Def'dts.*

SCHEDULE A.

Charles Shepperd	5	$5, 000
C. P. Williams	19	19, 000
Orville Oddie	100	100, 000
John Pemberton	2	2, 000
Niles Higenbotham	6	6, 000
George Ashley	1	1, 000
William Gould	50	50, 000
" " ex'r	26	26, 000
Nathan Marble	2	2, 000
Jacob Van Vecthen	2	2, 000
T. F. Bergen	6	6, 000
John J. Vanderbilt	3	3, 000
G. S. Boardman	2	2, 000

157 *Answer of Hoppock and others.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The joint and several answers of Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Dietz, William Wood, Benjamin F. Dawson, James A. Wood, John Wells, Ruric Martin, R. J. Burton, D. M. Castell, D. Farnsworth, Harvy Henry, James J. Day, W. Catlin, Bruce & Young, John M. Tuft, Jonathan P. Hopper, D. S. Kilgore, Noah Sturdevant, Wm. H. Fessenden, John L. Sutherland, E. Haskett Derby, Frederick Leverick, of the defendants to the bill of complaint of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees.

These defendants now and at times saving and reserving to themselves all benefit of exception to the bill of complaint of the said complainants, and answering as well on their own behalf as on behalf of all others interested in common with them as holders and owners of the two thousand five hundred bonds hereinafter mentioned, of the La Crosse and Milwaukee Railroad Company, for one thousand dollars each, and numbered from one to twenty-five hundred inclusive, for answer to the said bill of complaint, or to such parts thereof as are material or necessary for this defendant to answer unto, answer and say that they admit the statements of the said bill of complaint as to the organization of the La Crosse and Milwaukee Railroad Company, the passage of the acts of Congress and of the legislature of the State of Wisconsin, and the acceptance of the grant thereby conferred on the said railroad company, the construction of the railroad therein mentioned, the execution by the said railroad company of the deeds of trust therein mentioned and set forth in Schedules B and D, attached to the said bill of complaint, the issue by the said railroad company of two thousand five hundred bonds under and secured by the said original trust deed of the 31st day of December, one thousand eight hundred and fifty-six, for one thousand dollars each, numbered from one to two thousand five hundred, inclusive; the sale thereof by the said railroad company, and the failure and neglect of the said railroad company to pay the interest thereon. But this defendant denies that the said railroad company has issued any bonds under or in pursuance of or secured by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, to any greater amount than two and one half millions of dollars, or other than the said two thousand five hundred bonds for one thousand dollars each, and numbered from one to two thousand five hundred inclusive. And these defendants, further answering, say that they each and severally hold the bonds issued by the said La Crosse and Milwaukee Railroad Company provided for and secured by the said deed of trust set out in Schedule B, attached to said bill, which are set opposite their respective names in Schedule A, attached to this answer and made a part hereof, the same being a portion of the 2,500 bonds of $1,000 each issued by said company previous to July 14, 1857.

158 And these defendants, further answering, say that previous to the issuing of the said two thousand five hundred bonds, the said railroad company, for the purpose of inducing the purchase of said bonds, represented, by printed circulars and by the personal statements of its officers and

agents, that the said bonds so to be issued, and the proceeds thereof, were to and should be appropriated and applied exclusively to the construction of that portion of the said railroad company's road known as the land grant road, and running from Madison, by way of Portage City, to the St. Croix River or Lake, and to no other purpose, and that no more than two and one half millions of dollars in amount of such bonds would be issued until the completion of the said railroad company's road to La Crosse, nor without notice to the purchasers of the said two and one half millions of dollars of such bonds, nor should be issued or sold by said railroad company at a less rate than eighty per cent. of the par value thereof.

And these defendants, further answering, say that, relying upon the said representations and upon the good faith of the said railroad company in carrying out the same, and in adhering to the provisions of the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, they purchased the said bonds set out in Schedule A, attached hereto.

And these defendants, further answering, say that it is not true that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, the said railroad company was engaged in the construction and completion of that portion of the said road between Portage City and La Crosse; nor is it true that any of the bonds, amounting to one and a half millions of dollars, stated to have been issued on and after the twenty-ninth day of January, one thousand eight hundred and fifty-eight, in the said bill of complaint and in Schedule C, annexed thereto, were issued or the avails thereof used in constructing or completing any part of the said railroad between Portage City and Tomah, called the Junction, or any other portion of the said railroad company's road called the land grant road, and provided for in the said acts of Congress and of the legislature of the State of Wisconsin; but, on the contrary thereof, the entire construction of the said railroad from Portage City to Tomah was complete and paid for, or provided to be paid for, by and out of the said first above-mentioned bonds for two and one half millions of dollars or the avails thereof; and that the said bonds last mentioned for one and a half millions of dollars were issued, or pretended to be issued, for the express, avowed, and exclusive purpose of constructing the road of the said railroad company from Tomah to La Crosse, as hereinafter more particularly stated; and that the said last-mentioned bonds for one and a half millions of dollars were issued, or pretended to be issued, in violation and fraud of the said acts of Congress and of the legislature of the said State of Wisconsin, and of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and without the knowledge or consent of this defendant, and, as he believes, without the knowledge or consent of any of the holders of the said first above-mentioned two and a half millions of dollars of bonds, and in violation of the said representations of the said railroad company's officers and agents.

And these defendants, further answering, say that after the execution of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and after the issue thereunder, by the said railroad company, of the said first above-mentioned two and one half millions of dollars of bonds, and before the execution of the said deed of trust of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue of the said additional amount of bonds for one and a half million of dollars thereunder, the said railroad company, on or about the twenty-sixth day of September, one thousand eight hundred and fifty-seven, had executed and delivered to one J. Albert Helfenstein, and caused to be duly recorded in the office of the secretary of state of the State of Wisconsin, a certain deed of trust, bearing date on or about that day, of

the same premises, roads, lands, rights, and franchises mentioned in and conveyed by the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, in trust to secure other bonds of the said railroad company, to the amount of one million of dollars, upon certain trusts therein declared, and had issued thereunder and sold bonds secured thereby, now outstanding and unpaid, to the amount of three hundred and sixty-eight thousand five hundred dollars; and having prior to and on the twenty-sixth day of September, one thousand eight hundred and fifty-seven, became insolvent and unable to pay its debts, had, on or about the day last-mentioned, in view of such insolvency and inability, executed and delivered to Selah Chamberlain, in the said bill of complaint mentioned, a certain deed, bearing date on or about the day last mentioned, whereby, amongst other things, the said railroad company had sold and conveyed to the said Selah Chamberlain all its personal property, except such as was appurtenant to a certain other railroad of the said railroad company, called the Watertown division, and had leased and let to the said Selah Chamberlain, for an indefinite term, to be determined as therein specified, its entire railroad and railroad route from the city of Milwaukee to the city of La Crosse, together with all the estate, rights, privileges, appurtenances, and franchises belonging or incident thereto, in trust and upon the terms, amongst other things, that the said Selah Chamberlain should, from the thirtieth day of September, one thousand eight hundred and fifty-seven, and until that agreement should be terminated as therein provided, operate so much of the said railroad as was ready for operation, and from time to time such portions as should be ready, and should keep the said road and rolling stock upon the same in repair, and should receive and appropriate as therein provided all receipts or income of the said railroad, and should, when for the interest of said railroad company, buy additional rolling stock, and pay for the same out of the receipts of the said railroad, and should pay the expenses of keeping in repair and operating the said railroad, and should out of the net receipts pay, firstly, the interest on a certain mortgage of the said railroad company, commonly called the first eastern mortgage; secondly and thirdly, the interest on certain bonds of the city of Milwaukee; fourthly, the interest of a certain mortgage of the said railroad company, commonly called the second eastern mortgage; and fifthly and lastly, should pay certain debts due from the said railroad company to him, the said Selah Chamberlain, and that after the full payment of such debts to the said Selah Chamberlain he should surrender and reconvey to the said railroad company the premises thereby granted and leased, and had put the said Selah Chamberlain in possession of the premises thereby sold and conveyed, and leased and let, which remained from the first day of October, one thousand eight hundred and fifty-eight, uhtil after the exhibiting of the said bill of complaint in the possession of the said Selah Chamberlain, under the said deed last mentioned,
159 without the full execution of the trusts and terms thereof; which said deed last mentioned made no provision whatever for the payment of any part of the principal or interest of any bonds issued or to be issued under the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six; and had sold and disposed of all its other lines of railroad and property, and had no resources or income available for the payment of any part of the interest to become due on any property, and had no resources or income available for the payment of any part of the interest to become due on any bonds issued or to be issued under the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six; and had suffered judgments to be recovered against it and remain unsatisfied, in this court and in the courts of the State of Wisconsin, to the amount of nearly one million of dollars, which said judgments still remain in full

force, unpaid and unsatisfied; and had become and was wholly insolvent and unable to pay its debts, and had so managed its affairs that the whole line of railroad then constructed and since constructed and mentioned in and conveyed by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, together with all the lands, property, rights, and franchises, applicable under said deed of trust last mentioned, had become, were, and still are insufficient and inadequate to secure or satisfy the said two and one half millions of dollars of bonds first above mentioned, and so issued under and secured by the said trust deed last mentioned, and the said bonds to the amount of three hundred and sixty-eight thousand five hundred dollars so issued under the said deed of trust to J. A. Helfenstein. And so these defendants say that the said railroad company, before the execution of said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue thereunder of the said bonds for one and a half millions of dollars, had parted with and lost all beneficial interest in the premises mentioned therein, and had no right or power further to incumber the same under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, by the further issue of any amount of bonds equal in lien thereunder with the said bonds for two and one half millions of dollars first above mentioned, and that the attempt so to do was in violation and fraud of the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, and was a fraud upon this defendant and all other holders of the said twenty-five hundred bonds issued thereunder as above mentioned.

And these defendants, further answering, say that the said bonds for one and a half millions of dollars were not issued by or under the authority of the board of directors of the said railroad company, or by or under the authority of any person or persons, officer or officers, authorized to act in that behalf for the said railroad company, but were issued or pretended to be issued by individuals who were directors of the said railroad company, without authority, under pretence of constructing and completing the road of the said railroad company from Tomah to La Crosse; but that in fact the sum of four hundred and fifty thousand dollars only from the proceeds thereof was paid or to be paid for so constructing or completing the same, and that no further or greater sum was in any way realized by the said railroad company or applied to its use, out of or from the avails of the said last-mentioned bonds for one and a half millions of dollars; that under the false and colorable device and pretence of issuing the same to pay the said Selah Chamberlain, the contractor for completing and constructing the road last mentioned, the said bonds last mentioned were in effect surreptitiously obtained and taken by certain of the directors who sold the same, and who agreed among themselves to account, and in fact accounted, for the same at the rate of only thirty per cent. of the par value thereof, whereas in fact they sold the same or a great part thereof at a greater rate; that the said price or cost of four hundred and fifty thousand dollars for so completing and constructing the said road last mentioned was an extravagant over price therefor; that the same was not worth more than two hundred thousand dollars; and that the whole transaction was a fraudulent collusion between directors of the said railroad company and the said contractor to realize dishonest profits at the expense of diminishing the security of the existing incumbrances on the premises conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, to the amount of nearly or quite one and a quarter millions of dollars.

And these defendants, further answering, say that no more of the lines of railroad provided by or contemplated in the said acts of Congress and the legislature of the State of Wisconsin has ever been constructed than the

said railroad from Portage City to Tomah; and these defendants deny that the said railroad company had the right or power to issue the said bonds for one and a half millions of dollars in the manner and for the purposes hereinbefore stated, as charges or liens under the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six; that at the time of the execution of the said deed of trust last mentioned, and of the issue thereunder of the said bonds for two and a half millions of dollars, the lands to be acquired by the said railroad company by the due expenditure of the avails thereof, were represented by the said railroad company and generally reported to be of the value of ten millions of dollars, and formed in fact a principal basis of the credit of the said deed of trust and of the bonds issued thereunder; that the application of the avails of the said deed of trust to objects securing to the said railroad company the title of such lands was a material and principal provision of the said deed of trust, without which this defendant and, as he believes, no other persons would have been willing to purchase bonds issued thereunder; that at the time of the execution of the said trust deed of the twenty-eight day of January, one thousand eight hundred and fifty-eight, and of the issue thereunder of the said bonds for one and a half millions of dollars, the said railroad company had by the extravagant and fraudulent administration of its affairs became and was wholly unable to construct any of the residue of the said lines of road under the acts of Congress and of the legislature of the State of Wisconsin, saving and excepting only by such means as it could or might acquire from a further issue of bonds under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, to be devoted exclusively to that purpose, and that the said railroad company had in effect openly abandoned all purpose of constructing any further portion of the said lines of land grant road; and that even if otherwise legal and valid, the issue of the said bonds for one and a half millions of dollars for other and different purposes was in violation and fraud of the deed of trust last mentioned and of the liens and rights acquired thereunder.

And these defendants, further answering, say that prior to and at the time of the issue of the said bonds for one and a half millions of dollars all of the facts herein stated relating to the said railroad company, its contracts, operations, and condition, were public and notorious, well understood by all persons interested in or dealing with the said railroad company or its securities, and, as this defendant believes and alleges, to all persons purchasing or holding any of the said bonds for one and a half millions of dollars, and certainly so easily to be ascertained that any person of ordinary prudence intending to purchase any of such bonds would have learned them.

And these defendants, further answering, say and insists that the said deed of trust of the twenty-eight day of January, one thousand eight hundred and fifty-eight, has no legal or equitable validity to impair the rights acquired before its execution by this defendant and others, by the purchase of bonds, part of the said first issue of two and a half millions of dollars, or to change the general scope and policy of the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, on the faith of which this defendant and others became purchasers of bonds issued thereunder; and that, if the said bonds for one and a half millions dollars, or any of them should be held to have any legal validity, and to have or constitute any legal or equitable lien on the premises conveyed by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, such lien is not equal with the lien of the said bonds of these defend-
160 ants or any of the said first issue of two thousand five hundred bonds for the aggregate of two and a half millions of dollars, but is subsequent and subordinate thereto.

any part of the said railroad between Portage City and Tomah, called the Junction, or any other portion of the said railroad company's road called the land grant road, and provided for in the said acts of Congress and of the legislature of the State of Wisconsin; but, on the contrary thereof, the entire construction of the said railroad from Portage City to Tomah was complete and paid for or provided to be paid for by and out of the said first above-mentioned bonds for two and one half millions of dollars or the avails thereof; and that the said bonds last mentioned for one and a half millions of dollars were issued or pretented to be issued for the express, avowed, and exclusive purpose of constructing the road of the said railroad company from Tomah to La Crosse, as hereinafter more particularly stated; and that the said last-mentioned bonds for one and a half millions of dollars were issued, or pretended to be issued, in violation and fraud of the said acts of Congress and of the legislature of the said State of Wisconsin, and of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and without the knowledge or consent of this defendant, and, as he believes, without the knowledge or consent of any of the holders of the said first above-mentioned two and a half millions of dollars of bonds, and in violation of the said representations of the said railroad company's officers and agents.

And these defendants, further answering, say that after the execution of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and after the issue thereunder by the said railroad company of the said first above-mentioned two and one half millions of dollars of bonds, and before the execution of the said deed of trust of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretented issue of the said additional amount of bonds for one and a half million of dollars thereunder, the said railroad company on or about the twenty-sixth day of September, one *one* thousand eight hundred and fifty-seven, had executed and delivered to one J. Albert Helfenstein, and caused to be duly recorded in the office of the secretary of state of the State of Wisconsin, a certain deed of trust, bearing date on or about that day, of the same premises, roads, lands, rights, and franchises mentioned in and conveyed by the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, in trust to secure other bonds of the said railroad company to the amount of one million of dollars upon certain trusts therein declared, and had issued thereunder and sold bonds secured thereby, now outstanding and unpaid, to the amount of three hundred and sixty-eight thousand five hundred dollars; and having prior to and on the twenty-sixth day of September, one thousand eight hundred and fifty-seven, became insolvent and unable to pay its debts, had, on or about the day last mentioned, in view of such insolvency and inability, executed and delivered to Selah Chamberlain, in the said bill of complaint mentioned, a certain deed bearing date on or about the day last mentioned, whereby, amongst other things, the said railroad company had sold and conveyed to the said Selah Chamberlain all its personal property, except such as was appurtenant to a certain other railroad of the said railroad company, called the Watertown division, and had leased and let to the said Selah Chamberlain, for an indefinite term, to be determined as therein specified, its entire railroad and railroad route from the city of Milwaukee to the city of La Crosse, together with all the estate, rights, privileges, appurtenances, and franchises, belonging or incident thereto, in trust and upon the terms, amongst other things, that the said Selah Chamberlain should, from the thirtieth day of September, one thousand eight hundred and fifty-seven, and until that agreement should be terminated as therein provided, operate so much of the said railroad as was ready for operation, and from time to time such portions as should be ready, and should

keep the said road and rolling stock upon the same in repair, and should receive and appropriate as therein provided all receipts or income of the said railroad, and should, when for the interest of said railroad company, buy additional rolling stock, and pay for the same out of the receipts of the said railroad, and should pay the expenses of keeping in repair and operating the said railroad, and should out of the net receipts pay, firstly, the interest on a certain mortgage of the said railroad company, commonly called the first eastern mortgage; secondly and thirdly, the interest on certain bonds of the city of Milwaukee; fourthly, the interest of a certain mortgage of the said railroad company, commonly called the second eastern mortgage, and fifthly and lastly, should pay certain debts due from the said railroad company to him, the said Selah Chamberlain, and that after the full payment of such debts to the said Selah Chamberlain he should surrender and reconvey to the said railroad company the premises thereby granted and leased, and had put the said Selah Chamberlain in possession of the premises thereby sold and conveyed, and leased and let, which remained from the first day of October, one thousand eight hundred and fifty-eight, until after the exhibiting of the said bill of complaint in the possession of the said Selah Chamberlain, under the said deed last mentioned, with-
163 out the full execution of the trusts and terms thereof; which said deed last mentioned made no provision whatever for the payment of any part of the principal or interest of any bonds issued or to be issued under the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six; and had sold and disposed of all its other lines of railroad and property, and had no rescources or income available for the payment of any part of the interest to become due on any property, and had no resources or income available for the payment of any part of the interest to become due or any bonds issued or to be issued under the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six; and had suffered judgments to be recovered against it and remain unsatisfied, in this court and in the courts of the State of Wisconsin, to the amount of nearly one million of dollars, which said judgments still remain in full force, unpaid and unsatisfied; and had become and was wholly insolvent and unable to pay its debts; and had so managed its affairs that the whole line of railroad then constructed and since constructed and mentioned in and conveyed by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, together with all the lands, property, rights, and franchises applicable under the said deed of trust last mentioned had become, were, and still are insufficient and inadequate to secure or satisfy the said two and one half millions of dollars of bonds first above mentioned, and so issued under and secured by the said trust deed last mentioned, and the said bonds to the amount of three hundred and sixty-eight thousand five hundred dollars so issued under the said deed of trust to J. A. Helfenstein. And so this defendant says that the said railroad company before the execution of said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue thereunder of the said bonds for one and a half millions of dollars, had parted with and lost all beneficial interest in the premises mentioned therein, and had no right or power further to incumber the same under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, by the further issue of any amount of bonds equal in lien thereunder with the said bonds for two and one half millions of dollars first-above-mentioned, and that the attempt so to do was in violation and fraud of the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, and was a fraud upon this defendant and all other holders of the said twenty-five hundred bonds issued thereunder as above mentioned.

And these defendants, further answering, say that the said bonds for one and a half millions of dollars were not issued by or under the authority of the board of directors of the said railroad company, or by or under the authority of any person or persons, officer or officers, authorized to act in that behalf for the said railroad company, but were issued or pretended to be issued by individuals who were directors of the said railroad company, without authority, under pretence of constructing and completing the road of the said railroad company from Tomah to La Crosse; but that in fact the sum of four hundred and fifty thousand dollars only from the proceeds thereof was paid or to be paid for so constructing or completing the same, and that no further or greater sum was in any way realized by the said railroad company or applied to its use, out of or from the avails of the said last mentioned bonds for one and a half millions of dollars; that under the false and colorable device and pretence of issuing the same to pay the said Selah Chamberlain, the contractor for completing and constructing the road last mentioned, the said bonds last mentioned were in effect surreptitiously obtained and taken by certain of the directors, who sold the same, and who agreed among themselves to account, and in fact accounted, for the same at the rate of only thirty per cent. of the par value thereof, whereas in fact they sold the same or a great part thereof at a greater rate; that the said price or cost of four hundred and fifty thousand dollars for so completing and constructing the said road last mentioned was an extravagant over price therefor; that the same was not worth more than two hundred thousand dollars; and that the whole transaction was a fraudulent collusion between directors of the said railroad company and the said contractor to realize dishonest profits at the expense of diminishing the security of the existing incumbrances on the premises conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, to the amount of nearly or quite one and a quarter millions of dollars.

And these defendants, further answering, say that no more of the lines of railroad provided by or contemplated in the said acts of Congress and the legislature of the State of Wisconsin has ever been constructed than the said railroad from Portage City to Tomah; and this defendant denies that the said railroad company had the right or power to issue the said bonds for one and a half millions of dollars in the manner and for the purposes hereinbefore stated, as charges or liens under the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six; that at the time of the execution of the said deed of trust last mentioned, and of the issue thereunder of the said bonds for two and a half millions of dollars, the lands to be acquired by the said railroad company by the due expenditure of the avails thereof, were represented by the said railroad company and generally reported to be of the value of ten millions of dollars, and formed in fact a principal basis of the credit of the said deed of trust and of the bonds issued thereunder; that the application of the avails of the said deed of trust to objects securing to the said railroad company the title of such lands was a material and principal provision of the said deed of trust, without which this defendant, and, as he believes, no other person would have been willing to purchase bonds issued thereunder; that at the time of the execution of the said trust deed of the twenty-eight day of January, one thousand eight hundred and fifty-eight, and of the issue thereunder of the said bonds for one and a half millions of dollars, the said railroad company had by the extravagant and fraudulent administration of its affairs became and was wholly unable to construct any of the residue of the said lines of road under the acts of Congress and of the legislature of the State of Wisconsin, saving and excepting only by such means as it could or might acquire from a further issue of bonds under the said deed of trust of the thirty-first day of De-

cember, one thousand eight hundred and fifty-six, to be devoted exclusively to that purpose, and that the said railroad company had in effect openly abandoned all purpose of constructing any further portion of the said lines of land grant road; and that even if otherwise legal and valid, the issue of the said bonds for one and a half millions of dollars for other and different purposes was in violation and fraud of the deed of trust last mentioned and of the liens and rights acquired thereunder.

And these defendants, further answering, say that prior to and at the time of the issue of the said bonds for one and a half millions of dollars, all of the facts herein stated relating to the said railroad company, its contracts, operations, and condition, were public and notorious, well understood by all persons interested in or dealing with the said railroad company or its securities, and, as this defendant believes and alleges, to all persons purchasing or holding any of the said bonds for one and a half millions of dollars, and certainly so easily to be ascertained that any person of ordinary prudence intending to purchase any of such bonds would have learned them.

And these defendants, further answering, say and insists that the said deed of trust of the twenty-eight day of January, one thousand eight hundred and fifty-eight, has no legal or equitable validity to impair the rights acquired before its execution by this defendant and others, by the purchase of bonds, part of the said first issue of two and a half millions of dollars, or to change the general scope and policy of the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, on the faith of which this defendant and others became purchasers of bonds issued thereunder; and that, if the said bonds for one and a half millions of dollars, or any of them, should be held to have any legal validity, and to have or constitute any legal or equitable lien on the premises conveyed by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, such lien is not equal with the lien of the said bonds of this
164 defendant or of any of the said first issue of two thousand five hundred bonds for the aggregate of two and a half millions of dollars, but is subsequent and subordinate thereto.

And this defendant insists that the decree in this cause should declare and establish the amount of the said first issue of bonds, numbered from one to two thousand five hundred, inclusive, and amounting to two and a half millions of dollars, as the first lien on the premises mentioned in and conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, paramount and prior to all other amounts and liens thereon.

JAMES S. BROWN, *Solr's for Df'ts.*

SCHEDULE A.

Henry G. Gilbert	30	$30, 000
John Hardy	3	3, 000
George W. Berrian	2	2, 000
George Strobel	6	6, 000
G. R. Van Allen	1	1, 000
James S. Fulton	2	2, 000

165 And by consent this bill is considered as amended by making these several parties defendants, but the hearing not to be delayed thereby.

December 24, 1860, receiver's report for month of November filed.

December 24, 1860, depositions received from post office, and filed.

And afterwards, on the 15 day of January, 1861, came the defendant Selah Chamberlain by his solicitors, and filed copies of exhibits with a stipulation annexed.

January 22d, 1861, came the receiver and filed his report for the month of December, 1860.

And afterwards, on the 2d day of February, 1861, came John Nicholson by his solicitor, Mr. Brown, and by consent filed his answer as of the 1st day of October, 1860, as follows, viz:

166 *Answer Nicholson.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The separate answer of John Nicholson, defendant, to the bill of complaint of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees.

This defendant now and at all times saving and reserving to himself all benefit of exception to the bill of complaint of the said complainants, and answering as well on his own behalf as on behalf of all others interested in common with such as holders and owners of the two thousand five hundred bonds hereinafter mentioned, of the La Crosse and Milwaukee Railroad Company, for one thousand dollars each, and numbered from one to twenty-five hundred, inclusive, for answer to the said bill of complaint, or to such parts thereof as are material or necessary for this defendant to answer unto, answer and say that he admit the statements of the said bill of complaint as to the organization of the La Crosse and Milwaukee Railroad Company, the passage of the acts of Congress and of the legislature of the State of Wisconsin, and the acceptance of the grant thereby conferred on the said railroad company, the construction of the railroad therein mentioned, the execution by the said railroad company of the deeds of trust therein mentioned and set forth in Schedules B and D, attached to the said bill of complaint, the issue by the said railroad company of two thousand five hundred bonds under and secured by the said original trust deed of the 31st day of December, one thousand eight hundred and fifty-six, for one thousand dollars each, numbered from one to two thousand five hundred, inclusive; the sale thereof by the said railroad company, and the failure and neglect of the said railroad company to pay the interest thereon. But this defendant denies that the said railroad company has issued any bonds under or in pursuance of or secured by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, to any greater amount than two and one half millions of dollars, or other than the said two thousand five hundred bonds for one thousand dollars each, and numbered from one to two thousand five hundred, inclusive. And further saith that he is an alien, a subject of the queen of Great Britain.

167 And this defendant, further answering, says that previous to the issuing of the said two thousand five hundred bonds, the said railroad company, for the purpose of inducing the purchase of said bonds, represented by printed circulars and by the personal statements of its officers and agents, that the said bonds so to be issued and the proceeds thereof were to and should be appropriated and applied exclusively to the construction of that portion of the said railroad company's road known as the land grant road, and running from Madison, by way of Portage City, to the St. Croix River or Lake, and to no other purpose, and that no more than two and one half millions of dollars in amount of such bonds would be issued until the completion of the said railroad company's road to La Crosse, nor with-

out notice to the purchasers of the said two and one half millions of dollars of such bonds, nor should be issued or sold by said railroad company at a less rate than eighty per cent. of the par value thereof.

And this defendant, further answering, says that, relying upon the said representations and upon the good faith of the said railroad company in carrying out the same, and in adhering to the provisions of the said trust deed of the 31st day of December, one thousand eight hundred and fifty six, he purchased from said company and paid for in cash one hundred and fifteen of said bonds, part of the first 2,500 bonds issued under said deed of trust.

And this defendant, further answering, says that it is not true that at the time of the execution of the said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, the said railroad company was engaged in the construction and completion of that portion of the said road between Portage City and La Crosse; nor is it true that any of the bonds amounting to one and a half millions of dollars, stated to have been issued on and after the twenty-ninth day of January, one thousand eight hundred and fifty-eight, in the said bill of complaint and in Schedule C annexed thereto, were issued as the avails thereof used in constructing or completing any part of the said railroad between Portage City and Tomah, called the Junction, or any other portion of the said railroad company's road called the land grant road, and provided for in the said acts of Congress and of the legislature of the State of Wisconsin; but, on the contrary thereof, the entire construction of the said railroad from Portage City to Tomah was complete and paid for, or provided to be paid for, by and out of the said first above-mentioned bonds for two and one half millions of dollars or the avails thereof; and that the said bonds last mentioned for one and a half millions of dollars were issued or pretended to be issued for the express, avowed, and exclusive purpose of constructing the road of the said railroad company from Tomah to La Crosse, as hereinafter more particularly stated; and that the said last-mentioned bonds for one and a half millions of dollars were issued or pretended to be issued, in violation and fraud of the said acts of Congress and of the legislature of the said State of Wisconsin, and of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and without the knowledge or consent of this defendant, and, as he believes, without the knowledge or consent of any of the holders of the said first above-mentioned two and a half millions of dollars of bonds, and in violation of the said representations of the said railroad company's officers and agents.

And this defendant, further answering, says that after the execution of the said deed of trust of the 31st day of December, one thousand eight hundred and fifty-six, and after the issue thereunder, by the said railroad company, of the said first above-mentioned two and one half millions of dollars of bonds, and before the execution of the said deed of trust of the twenty-eighth day of January, one thousand eight hundred and fifty-eight, and before the issue or pretended issue of the said additional amount of bonds for one and a half million of dollars thereunder, the said railroad company, on or about the twenty-sixth day of September, one *one* thousand eight hundred and fifty-seven, had executed and delivered to one J. Albert Helfenstein, and caused to be duly recorded in the office of the secretary of state of the State of Wisconsin, a certain deed of trust, bearing date on or about that day, of the same premises, roads, lands, rights, and franchises mentioned in and conveyed by the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, in trust to secure other bonds of the said railroad company, to the amount of one million of dollars, upon certain trusts therein declared, and had issued thereunder and sold bonds secured

thereby, now outstanding and unpaid, to the amount of three hundred and sixty-eight thousand five hundred dollars; and having prior to and on the twenty-sixth day of September, one thousand eight hundred and fifty-seven, became insolvent and unable to pay its debts, had, on or about the day last mentioned, in view of such insolvency and inability, executed and delivered to Selah Chamberlain in the said bill of complaint mentioned, a certain deed, bearing date on or about the day last mentioned, whereby, amongst other things, the said railroad company had sold and conveyed to the said Selah Chamberlain all its personal property, except such as was appurtenant to a certain other railroad of the said railroad company, called the Watertown division, and had leased and let to the said Selah Chamberlain, for an indefinite term, to be determined as therein specified, its entire railroad and railroad route from the city of Milwaukee to the city of La Crosse, together with all the estate, rights, privileges, appurtenances, and franchises belonging or incident thereto, in trust and upon the terms, amongst other things, that the said Selah Chamberlain should, from the thirtieth day of September, one thousand eight hundred and fifty-seven, and until that agreement should be terminated as therein provided, operate so much of the said railroad as was ready for operation, and from time to time such portions as should be ready, and should keep the said road and rolling stock upon the same in repair, and should receive and appropriate as therein provided all receipts or income of the said railroad, and should, when for the interest of said railroad company, buy additional rolling stock, and pay for the same out of the receipts of the said railroad, and should pay the expenses of keeping in repair and operating the said railroad, and should out of the net receipts pay, firstly, the interest on a certain mortgage of the said railroad company, commonly called the first eastern mortgage; secondly and thirdly, the interest on certain bonds of the city of Milwaukee; fourthly, the interest of a certain mortgage of the said railroad company, commonly called the second eastern mortgage, and fifthly and lastly, should pay certain debts due from the said railroad company to him, the said Selah Chamberlain, and that after the full payment of such debts to the said Selah Chamberlain he should surrender and reconvey to the said railroad company the premises thereby granted and leased, and had put the said Selah Chamberlain in possession of the premises thereby sold and conveyed, and leased and let, which remained from the first day of October, one thousand eight hundred and fifty-eight, until after the exhibiting of the said bill of complaint in the possession of the said Selah Chamberlain, under the said deed last men-
168 tioned, without the full execution of the trusts and terms thereof; which said deed last mentioned made no provision whatever for the payment of any part of the principal or interest of any bonds issued or to be issued under the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six; and had sold and disposed of all its other lines of railroad and property, and had no resources or income available for the payment of any part of the interest to become due on any property, and had no resources or income available for the payment of any part of the interest to become due on any bonds issued or to be issued under the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six; and had suffered judgments to be recovered against it and remain unsatisfied, in this court and in the courts of the State of Wisconsin, to the amount of nearly one million of dollars, which said judgments still remain in full force, unpaid and unsatisfied; and had become and was wholly insolvent and unable to pay its debts; and had so managed its affairs that the whole line of railroad then constructed and since constructed and mentioned in and conveyed by the said trust deed of the 31st day of December, one thousand eight hundred and fifty-six, together with all the

lands, property, rights and franchises, applicable under the said deed of trust last mentioned had become, were and still are insufficient and inadequate to secure or satisfy the said two and one half millions of dollars of bonds first above mentioned, and so issued under and secured by the said trust deed last mentioned, and the said bonds to the amount of three hundred and sixty-eight thousand five hundred dollars so issued under the said deed of trust to J. A. Helfenstein. And so this defendant says that the said railroad company, before the execution of said trust deed of the twenty-eighth day of January, one thousand eight hundred and fifty eight, and before the issue or pretended issue thereunder of the said bonds for one and a half millions of dollars, had parted with and lost all beneficial interest in the premises mentioned therein, and had no right or power further to incumber the same under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, by the further issue of any amount of bonds equal in lien thereunder with the said bonds for two and one half millions of dollars first above mentioned, and that the attempt so to do was in violation and fraud of the said trust deed of the 31st of December, one thousand eight hundred and fifty-six, and was a fraud upon this defendant and all other holders of the said twenty-five hundred bonds issued thereunder as above mentioned.

And this defendant, further answering, says that the said bonds for one and a half millions of dollars were not issued by or under the authority of the board of directors of the said railroad company, or by or under the authority of any person or persons, officer or officers, authorized to act in that behalf for the said railroad company, but were issued, or pretended to be issued, by individuals who were directors of the said railroad company, without authority, under pretence of constructing and completing the road of the said railroad company from Tomah to La Crosse; but that in fact the sum of four hundred and fifty thousand dollars only from the proceeds thereof was paid, or to be paid, for so constructing or completing the same, and that no further or greater sum was in any way realized by the said railroad company or applied to its use out of or from the avails of the said last mentioned bonds for one and a half millions of dollars; that under the false and colorable device and pretence of issuing the same to pay the said Selah Chamberlain, the contractor for completing and constructing the road last mentioned, the said bonds last mentioned were in effect surreptitiously obtained and taken by certain of the directors, who sold the same, and who agreed among themselves to account, and in fact accounted, for the same at the rate of only thirty per cent. of the par value thereof, whereas in fact they sold the same, or a great part thereof, at a greater rate; that the said price or cost of four hundred and fifty thousand dollars for so completing and constructing the said road last mentioned was an extravagant over price therefor; that the same was not worth more than two hundred thousand dollars, and that the whole transaction was a fraudulent collusion between directors of the said railroad company and the said contractor to realize dishonest profits at the expense of diminishing the security of the existing incumbrances on the premises conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, to the amount of nearly or quite one and a quarter millions of dollars.

And this defendant, further answering, says that no more of the lines of railroad provided by or contemplated in the said acts of Congress and the legislature of the State of Wisconsin has ever been constructed than the said railroad from Portage City to Tomah; and this defendant denies that the said railroad company had the right or power to issue the said bonds for one and a half millions of dollars in the manner and for the purposes hereinbefore stated, as charges or liens under the said deed of trust of the

31st day of December, one thousand eight hundred and fifty-six; that at the time of the execution of the said deed of trust last mentioned, and of the issue thereunder of the said bonds for two and a half millions of dollars, the lands to be acquired by the said railroad company by the due expenditure of the avails thereof were represented by the said railroad company company and generally reported to be of the value of ten millions of dollars, and formed in fact a principal basis of the credit of the said deed of trust and of the bonds issued thereunder; that the application of the avails of the said deed of trust to objects securing to the said railroad company the title of such lands was a material and principal provision of the said deed of trust, without which this defendant and, as he believes, no other persons would have been willing to purchase bonds issued thereunder; that at the time of the execution of the said trust deed of the twenty-eight day of January, one thousand eight hundred and fifty-eight, and of the issue thereunder of the said bonds for one and a half millions of dollars, the said railroad company had, by the extravagant and fraudulent administration of its affairs, became and was wholly unable to construct any of the residue of the said lines of road under the acts of Congress and of the legislature of the State of Wisconsin, saving and excepting only by such means as it could or might acquire from a further issue of bonds under the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, to be devoted exclusively to that purpose, and that the said railroad company had in effect openly abandoned all purpose of constructing any further portion of the said lines of land grant road; and that even if otherwise legal and valid, the issue of the said bonds for one and a half millions of dollars for other and different purposes was in violation and fraud of the deed of trust last mentioned, and of the liens and rights acquired thereunder.

And this defendant, further answering, says that prior to and at the time of the issue of the said bonds for one and a half millions of dollars, all of the facts herein stated relating to the said railroad company, its contracts, operations, and condition were public and notorious, well understood by all persons interested in or dealing with the said railroad company or its securities, and, as this defendant believes and alleges, to all persons purchasing or holding any of the said bonds for one and a half millions of dollars, and certainly so easily to be ascertained that any person of ordinary prudence intending to purchase any of such bonds would have learned them.

And this defendant, further answering, says and insists that the said deed of trust of the twenty-eight day of January, one thousand eight hundred end fifty-eight, has no legal or equitable validity to impair the rights acquired before its execution by this defendant and others by the purchase of bonds, part of the said first issue of two and a half millions of dollars, or to change the general scope and policy of the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, on the faith of which this defendant and others became purchasers of bonds issued thereunder; and that if the said bonds for one and a half millions of dollars, or any of them, should be held to have any legal validity, and to have or constitute any legal or equitable lien on the premises conveyed by the said deed of trust of the thirty-first day of December, one thousand eight hundred and fifty-six, such lien is not equal with the lien of the said
169 bonds of this defendant or any of the said first issue of two thousand five hundred bonds for the aggregate of two and a half millions of dollars, but is subsequent and subordinate thereto.

And this defendant insists that the decree in this cause should declare and establish the amount of the said first issue of bonds, numbered from one to two thousand five hundred inclusive, and amounting to two and a half

millions of dollars, as the first lien on the premises mentioned in and conveyed by the said trust deed of the thirty-first day of December, one thousand eight hundred and fifty-six, paramount and prior to all other amounts and liens thereon.

JAMES S. BROWN, *Sol'r for def'd't.*

170 February 2, 1861.—This day testimony received from Emmons, Van Dyke & Hamilton, and filed.

February 4, 1861.—Depositions of E. P. Whaling, E. H. Goodrich, Alfred Noxon, and S. Chamberlain received from H. L. Palmer, esq., and filed, and same day depositions received from Winfield Smith, esq, and filed, and same day depositions received from James S. Brown and filed. And afterwards, on the 4th day of February, came the defendant, Selah Chamberlain, by his counsel, and by consent filed an amendment to his answer, and the same was considered as replied to, and not to cause delay. Said amendment is as follows, to wit:

171 *Amendment to answer, Selah Chamberlain.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, SHEPERD KNAPP, AND JAMES T. Soutter,
vs.
SELAH CHAMBERLAIN IMPL'D WITH THE LA CROSSE AND Milwaukee Railroad Company and others.
} In equity.

Amendment to the answer of the defendant Selah Chamberlain to the bill of complaint of Greene C. Bronson and others, complainants.

The defendant Selah Chamberlain, for a further, and amended, and additional answer to the bill of complaint in this cause answering, says that on the 29th day of July, 1858, a station at the terminus of the La Crosse and Milwaukee Railroad Company was needed at the city of La Crosse, for the transaction of its business, and that to procure the same this defendant on said day leased of Thomas Spence and Benjamin W. Reynolds, of said city, a strip or parcel of land situate on the east bank Black River, on lot number one, section thirty-one, township sixteen north, of range seven west, being 250 feet in width from east to west and extending 600 feet northerly from the south line of said lot one. To have and to hold to him, his
172 executors, administrators, and assigns until such time as the La Crosse and Milwaukee Railroad Company or its assigns shall pay or cause to be paid to the said Chamberlain or his assigns all costs and expenses incurred by him with twelve per cent. annum interest, in and about creating and building on said premises buildings and appurtenances for depot purposes, as will more fully and at large appear by reference to said lease bearing date the 29th day of July, 1858, in possession of this defendant when produced to this court.

This defendant, further answering, says that between the date of said lease and the first day of December, 1858, he made large and valuable improvements on said demised premises in the construction of a depot and buildings for said La Crosse and Milwaukee Railroad Company, which since then has been and is now used by said railroad company.

This defendant further says that up to the 1st day of December, 1858, he expended in such buildings and improvements the sum of twelve thousand one hundred and ninety dollars and ninety-five cents, which sum and interest thereon from said 1st day of December, 1858, he avers he omitted to

claim in his original answer, and he avers and claims should be first paid to him out of the proceeds of sale of said road, or out of any monies belonging to said railroad company to be distributed by this honorable court.

SELAH CHAMBERLAIN.
EMMONS, VAN DYKE & HAMILTON,
Sol'rs of Counsel.

173 *Affidavit of Helfenstein.*

And on the same day came the defendant J. Albert Helfenstein, and by his affidavit and stipulation filed as follows, viz:

U. S. district court, dist. of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, and others.

DISTRICT OF WISCONSIN, *Milwaukee County, ss:*

J. Albert Helfenstein, one of the defendants in the above-entitled cause, being duly sworn deposes and says that Selah Chamberlain, one of the defendants in this suit, is a material and necessary witness for this defendant in this cause, and that this deponent is informed and believes he is not interested in the matters in relation to which the testimony of the said Chamberlain is deemed material and to which it is desired to examine him.

J. A. HELFENSTEIN.

Subscribed and sworn before me this 27th day of July, A. D. 1860.
D. G. ROGERS, *Notary Public, Mil. Co., Wis.*

174 *Stipulation.*

U. S. dist. court, dist. Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, SHEPHERD KNAPP, trustees.
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, *et als.*

It is hereby stipulated and agreed by and between the complainants, by their solicitors, Messrs. Cary & Pratt, and the defendant J. Albert Helfenstein, by his solicitors, Butler, Buttick & Cottrell and Palmer & Stark, that on filing this stipulation an order may be entered in this case, that the defendant Selah Chamberlain, one of the defendants in this cause, may be examined as a witness therein on behalf of the defendant, J. Albert Helfenstein, as to any matters at issue in this cause between the said complainants and the said defendant, J. Albert Helfenstein, in which the said Selah Chamberlain is not interested, subject to all just exceptions.

CARY & PRATT, *Sol'rs for Compl.*
BUTLER, BUTTICK & COTTRELL,
PALMER & STARK,
Sol'rs for deft. Helfenstein.

Whereupon it is ordered by the district judge as follows, to wit:

175 *Order of court.*

U. S. dist. court, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, *et als.*

On reading and filing the affidavit of J. Albert Helfenstein, one of the defendants in this action, and the stipulation of the solicitors of the complainants and the said defendant Helfenstein, it is ordered by the court that the defendant Selah Chamberlain, one of the defendants in this cause, may be examned as a witness therein on behalf of the said defendant, J. Albert Helfenstein, as to any matters at issue in this cause between the said complainants and the said defendant, J. Albert Helfenstein, in which the said Selah Chamberlain is not interested. The said Chamberlain to be examined as other witnesses, and his testimony to be subject to all just exceptions.

A. G. MILLER, *Judge.*

July 28, 1860.

And this cause came on to be heard upon the pleadings and proofs, and not being concluded the further hearing was adjourned until to-morrow morning.

And afterwards, on the 5th day of February, 1861, came the defendant Chamberlain, by his solicitors, Messrs. Emmons, Van Dyke & Hamilton, and filed his motion to suppress depositions, as follows, viz:

176 *Motion to suppress depositions by Chamberlain.*

United States district court in and for the district of Wisconsin.

JAMES T. SOUTTER, GREENE C. BRONSON, AND SHEPHERD Knapp,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Selah Chamberlain, and others.

And now comes the def't Chamberlain and excepts to each of the depositions of D. W. Keyes, Byron Kilbourn, Jackson Hadly, Moses Kneeland, Printis Dow, Nehemiah P. Stanton, and moves to suppress them so far as they relate to him and his rights, because no notice was given to said Chamberlain of the taking of the same and because he had no right or opportunity to put cross-interrogatories, or in any question said witnesses, and because said testimony and each and every part thereof is as to said Chamberlain incompetent.

Second. If the above motion is overruled, then said Chamberlain moves and asks the court to suppress each and all of said depositions except that relates to the issuing and sale of the bonds secured by the mortgage mentioned in the bill of complaint in this action.

EMMONS, VAN DYKE & HAMILTON,
Sol'rs for df't Chamberlain.

177 Which was endorsed "Feb. 5, 1861. This motion is overruled by the court."

And on the same day came the parties by their counsel, and the hearing of this cause was resumed, and not being concluded, the further hearing was adjourned until to-morrow morning.

Afterwards, on the 6th day of February, 1861, came the defendant Selah Chamberlain, by his solicitors, Messrs. Emmons, Van Dyke & Hamilton, and moves the court as follows, viz:

Motion of Chamberlain to suppress record in Cleveland case.

United States district court, in and for the district of Wisconsin.

JAMES T. SOUTTER, AND GREENE C. BRONSON, AND SHEPherd Knapp,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Selah Chamberlain, and others.
} In equity.

And now comes the defendant Selah Chamberlain by his solicitors, and moves the court to suppress the record offered and filed or to be filed in this cause, to be used in this action of the case in equity in this court wherein Newcomb Cleaveland is complainant and the La Crosse and Milwaukee Railroad Company and others are defendants, because said record is incompetent and irrelevant.

2. Because that it appears in and by such record that there has
178 been an appeal taken by Selah Chamberlain from the decree in that case to the Supreme Court of the United States, which appeal operates as a stay of proceedings, and as a suspension of that decree.

3. Because the depositions and evidence in that case are incompetent evidence in this case, and said Chamberlain objects and excepts to said record and every part and parcel thereof as evidence in this case, and moves to suppress the same.

EMMONS, VAN DYKE & HAMILTON,
Sol'rs for d'f't Chamberlain.

Which was endorsed "Feb. 6, 1861. This motion is overruled by the court."

And on the same day came the parties by their counsel, and the further hearing of this cause was resumed, and being concluded the court took time to consider.

And on the 16th day of February, 1861, came Hans Crocker, receiver, and presented his petition with proofs annexed, as follows, viz:

Petition of Crocker.

District court of the U. S. for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, SHEPHERD KNAPP,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY AND others.

179 To the Hon. A. G. Miller, judge of said court:

My attention has been called for the last four months to the erection of a grain elevator, and the making of other improvements upon the depot buildings, dock, and levee at La Crosse.

I beg leave to refer to the letters of Edwin H. Goodrich, manager of the road, William R. Hill, of La Crosse, formerly chief engineer of the road, John Lawler, agent of the Milwaukee and Mississippi road, at Prairie du Chien, Alexander Miller, who erected the elevator at Milwaukee and Prairie du Chien, on the Milwaukee and Mississippi R. r'd.

In their words I entirely concur, and believe the interests of this road require the making of the improvements suggested by Mr. Goodrich. In

order that the piles may be driven before the ground becomes frozen, it is desirable that the work should be commenced without delay.

H. CROCKER, *Receiver.*

MILWAUKEE, *November* 9, 1860.

H. Crocker, esq., receiver La C. & M. R. R. Co.:

In accordance with your instructions, I have been to La Crosse
180 with Mr. Alexander Miller, a practical builder of houses and machinery for elevating grain, Mr. W. R. Sill, formerly chief engineer of this co. Mr. Miller and myself examined the ground upon which it is proposed to build a grain elevator, and find the same well adapted to that purpose. The company has all the land that will be required for the building and for tracks to connect the same with the main track. All parties familiar with the amount of grain business done at La Crosse, and the present manner of doing it, agree in the opinion that an elevator building has become a matter of necessity, and cannot be dispensed with without great inconvenience and injury to the business of the road. The construction of a building for handling grain in bulk would enable the company to do all the grain business that might be offered, and would, without doubt, secure to this road the carrying of a very large proportion of the wheat sent from the upper Mississippi River. Mr. Miller's approximate estimate of the cost of the building and machinery, with capacity to store 50,000 bushels, and
181 receive and discharge 3,000 bushels an hour, is ten thousand dollars. The above estimate is based upon Chicago prices for lumber and other materials and labor, but I am satisfied that the actual cost would not reach more than $8,000, as lumber and labor can be had in that vicinity at very low rates. The arrangement of tracks, as proposed for the accomodation of the grain house, would add very much to the present facilities for handling merchandise, and would thereby save a large expense in doing the westward-bound business, and enable the company to do more than double the business that can be done at this time with present accommodations. I am of the opinion that the proposed improvements would be equal in its results to an income of fifty freight cars to the present equipment, and that it can be made for less than one fourth the cost of that number of cars.

Respectfully, &c.,

(Signed) EDWIN H. GOODRICH, *Manager.*

LA CROSSE, *Nov.* 9, 1860.

H. Crocker, esq., receiver La C. & M. R. r'd Co.:

182 DEAR SIR: To your enquiry of my opinion as to the necessity of the railroad co.'s constructing additional dock and storage room and a grain elevator at La Crosse, I would say that I consider the present facilities of your road at this point entirely inadequate to do the freighting business with economy and dispatch.

All of the present depot and dock was constructed in 1858, and was barely sufficient to accomodate the business at that time, and of necessity, the largely increased business of 1859 and 1860 has been done at a great disadvantage.

I think that many and sufficient good reasons can be urged why your facilities for making transhipment of freight at this place should be increased at once.

To maintain the good will of shippers, it is all important that their goods be forwarded promptly, (certainly when there are competing lines of roads and boats,) and your present facilities are too limited to do business rapidly. Another important consideration is, that most roads at the busy periods of

the year are short of cars, and with proper facilities for loading and
183 unloading your freight, a much greater service can be obtained from the same number of cars.

From observation and from report, I am satisfied that your road was short in the fall of 1859, and the same in this present fall, (1860,) and had the present proposed enlargement of depot, and dock, and grain elevator been constructed in the summer of 1859, I am fully persuaded that by this time the saving in handling the freight and grain from additional service of cars would have returned to the company all the necessary outlay of construction.

The waters of the Mississippi are fast wearing away your depot grounds, and a good dock could have been made in 1858 or 1859 for one half the expense that will now be required, and probably for less than at any future time. The depot grounds conveyed to the La Crosse and M. R.R. Co. in 1838, were to be 250 feet in width, measuring from river back, and on some portions of the ground then conveyed, the water has gained some 30 feet within the past two years, and by reference to the map of your grounds, you will see that the meander line surveyed in 1846 is, on an average, about
184 100 feet from the shore. As to the comparitive cost of and earnings to be effected by the erecting a grain elevator, I can express my views by saying that if I can be made safe in investing in the railroad lands, and can have the grain business of the road insured to me, that I am ready to put up an elevator without cost to the company, and will stipulate to handle all your grain promptly at less than one half the present cost to the co.

On this matter I have written a more lengthy letter than I intended, and will only say, to close, that, in my opinion, the present business of the road demands more dock and depot room, and that the present and prospective business will justify the expense of the same; will add that the company is too poor to be without them.

With respect, I am yours, &c.,

(Signed) W. R. SILL.

PRAIRIE DU CHIEN, *November* 9, 1860.

H. Crocker, esq., rec'r M. & M. R.r'd, Milwaukee:

185 D'R SIR: Yours of yesterday, upon the subject of elevators, is at hand. Permit me to say, in reply, that they are indispensable to the roads that would compete successfully for the grain trade of *of* the northwest, and turn it to an eastward, instead of permitting it to go to southern destinations.

The slow system of bagging is utterly inadequate to the rapidly increasing grain business of the Upper Mississippi, and must give way very soon to a far more expeditious one, and my experience has satisfied me that a system comprising bulk, barges, and elevators is the only one to adopt. In a word, the grain trade of the Mississippi requires and must have a mode of handling and transfer similar to that of your city, Chicago, Buffalo, or other places where grain is transferable in large quantities. One elevator here works admirably.

Yours truly,

J. LAWLER, *Agent.*

MILWAUKEE, *Nov.* 9, 1860.

H. Crocker, esq.:

DEAR SIR: At your request, and in company of Mr. Goodrich, I have
186 visited La Crosse and examined the ground on which an elevator would be erected, and also the manner in which you now handle the grain there, and have arrived at the following conclusions:

That an elevator is absolutely necessary there, to take care of the grain as fast as it arrives; that the saving in expense will be about 125 p'r cent. less in shipping grain with an elevator over the manner in which it is now done, (in the actual saving of money;) that the despatch in which grain can be shipped with an elevator will, in effect, materially increase your rolling stock; that, by making a suitable track to the elevator, the expense of handling rolling freight will be very much lessened; that by inspecting and shipping grain in bulk through an elevator, and giving receipts, you give more satisfaction to shippers; that, in my opinion, and without plans for a guide, the expense of an elevator to hold about 50,000 bushels will be nearly $10,000.

187 Hoping the reasons given are to your satisfaction, I remain yours truly,
(Signed) ALEXANDER MILLER.

United States district court for the district of Wisconsin.

GREENE C. BRONSON AND OTHERS
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY AND others.

MILWAUKEE COUNTY, *ss:*

Angus Smith, of the city of Milwaukee, of lawful age, being duly sworn, deposes and says that he is engaged in the business of receiving, storage, and transhipment of grain, using the elevator at the depot of the Milwaukee and Prairie du Chien railway; that he is acquainted with the operation of transporting grain on the Mississippi, and transhipment of the same from boat to cars, and the expenses and delays attending such transhipment, where no elevators are used. This affiant further says that an elevator erected at the landing of the La Crosse railroad, upon the bank of the Miss. River at La Crosse, would be of very great service in the operations of said railroad; that a suitable elevator would save in the expense of handling grain its cost every year; that it would also be of great service in
188 economizing rolling stock, where a deficiency exists, and that no road terminating at the Miss. River without a proper elevator, can successfully compete for the grain to be transported with roads having such facilities as an elevator affords.

ANGUS SMITH.

Sworn and subscribed before me this 9th day of Feb'y, 1861.
WALDRON Y. SILLECK, *Notary Public, Mil. Co., Wis.*

And no objection being made thereto, it is ordered by the court that the prayer of the said petition be, and hereby is, granted, and that the said receiver is allowed to expend out of the moneys in his hands, in the erection of said elevator and in making the necessary improvements on the wharf and landing, not exceeding ten thousand dollars.

And came the complainants by their counsel, and on their motion it is ordered by the court that the complainants' bill of complaint be, and hereby is, taken as confessed as to the defendants, the La Crosse and Milwaukee Railroad Company, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edward R. Persons, Avery Hill, A. V. Rudd, John H. Tesch, Dewitt
189 C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Edward H. Brodhead, John Hathaway, Charles Quentin, Lawrence G. Graham, Donald D. Scott, Milwaukee and Minnesota Railroad Company, Moses M. Davis, for their having failed to plead, answer, or demur thereto.

February 19, 1861, came the receiver and filed his report for the month of January, 1861.

Reference to masters.

And afterwards, on the 11th day of March, A. D. 1861, the following proceedings were had, to wit:

This day came the parties, by their counsel, and on consideration of the pleadings, proofs, and the arguments of counsel, it is ordered by the court that reference be, and hereby is, made to Winfield Smith, a master, and to Jerome R. Brigham and Joshua Hathaway, special masters, to ascertain and report the amount of interest due and unpaid on the bonds described in the mortgage or deed of trust, and the real amount of said bonds.

And the said masters shall ascertain and report the amounts of the several judgments of Newcomb Cleveland, Sebre Howard, and of Graham & Scott.

And it is further ordered that the said master report the amount of the several specific claims of Selah Chamberlain, and also an account of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mortgages; and that they may examine the said Chamberlain under oath, and require him to produce his books, and they may also take additional testimony to that on file.

And it is further ordered that the said masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by and included in this mortgage, and also in the first and second mortgages, respectively.

190 March 11, 1861, receiver's report for the month of February, 1861, filed.

March 21, 1861, ordered that Increase A. Lapham be, and he hereby is, appointed special master in this case, in place of Joshua Hathaway, who declined serving.

April 17, 1861, receiver's report for month of March, 1861, filed.

And afterwards, on the 6th day of May, 1861, ordered by the court that the receiver pay on account of interest, upon the mortgage and bonds mentioned and described in this bill, to the complainants or their solicitors of record, 2,500 dollars, and that the same may be receipted for by Messrs. Cary & Pratt as such solicitors.

And same day ordered by the court that the receiver pay 2,500 dollars on account of interest upon the first 1,991 bonds mentioned in the mortgage upon which this bill is founded, to the holders of the said 1,991 bonds or their attorney, and that the same may be receipted for by James S. Brown, esq., as such attorney, complainants' counsel of record consenting thereto.

May 13, 1861, receiver's report for month of April, 1861, filed.

June 15, 1861, receiver's report for month of May, 1861, filed.

191 And afterwards, on June 29, 1861, ordered that there be paid by the receiver to the complainants, to be credited on the interest upon the first 1,991 bonds mentioned in the bill, 20,000 dollars in currency at par, to be receipted for by Messrs. Cary & Pratt, as attorneys of record of said complainants.

And on the same day, ordered that there be paid by the receiver on the judgment of Newcomb Cleveland ag'st the La Crosse and Milwaukee Railroad Company ten thousand dollars in currency at par to be receipted for by Messrs. Finches, Lynde & Miller, attorneys of the said plaintiff.

July 13, 1861, receiver's report for month of June, 1861, filed.

And afterwards, on the 18th day of July, 1861, ordered that there be paid by the receiver on the judgment of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, twenty thousand dollars in currency at par, to be receipted for by Messrs. Finches, Lynde & Miller, attorneys of the said plaintiff.

And on the same day, ordered that there be disbursed by the receiver, out of the proceeds of the road, the sum not exceeding fifty-three thousand dollars in the purchase of such locomotives, engines, and freight cars as
192 in his opinion the increasing business on the road may require.

And on the same day, ordered that the portion of the order appointing the receiver which allows him to pay fees and expenses of litigation in the prosecution of this suit, be, and hereby is, rescinded, except as to the taxable costs, and that all such claims be denied. And it is ordered that twenty thousand dollars in currency at par be paid by receiver to complainants, and to be receipted for by Messrs. Cary & Pratt, their solicitors of record, on account of interest on the first twenty-five hundred dollars of bonds, and that such necessary expenses and fees may be paid out of the money allowed in this and former orders on account of interest.

August 14, 1861, receiver's report for month of July, 1861, filed.

And afterwards, on the 7th day of September, 1861, came Edwin C. Litchfield by his counsel, Messrs. Emmons & Van Dyke, and presented his petition to be allowed to become a party defendant hereto, in the words and figures following, to wit:

193 *Petition of E. C. Litchfield.*

Dstrict court of the United States of America for the district of Wisconsin, in equity.

Petition of Edwin C. Litchfield, in the matter of the suit of—
JAMES T. SOUTTER, GREEN C. BRONSON, SHEPARD KNAPP, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY AND OTHERS.

To the judge of the district court of the United States for the district of Wisconsin:

Your petitioner, Edwin C. Litchfield, a resident of the city of New York, and a citizen of the State of New York, respectfully shows unto your honor that on the 5th day of October, 1858, he recovered a judgment against the La Crosse and Milwaukee Railroad Company, in the district court of the United States for the district of Wisconsin, for the sum of $26,332 75, damages, and $20 76, costs; that said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated; that there is actually and equitably due upon said judgment the sum of $26,353 51, *dollars*, together with interest thereon from the 5th day of October, 1858, over and above all just claims by way of offset or otherwise.

Your petitioner further shows unto your honor that the complainants in the above-entitled cause filed their bill in this court against the La Crosse and Milwaukee Railroad Company and others, for the purpose of foreclosing a mortgage against the La Crosse and Milwaukee Railroad Company. Your petitioner also shows that he is not a resident of the State of Wisconsin; that he has not been made a party in the above-entitled cause, and has not been served with process therein.

Your petitioner therefore prays that by an order of this court, he may be permitted become a party defendant in the above-entitled cause, and to file his answer therein, and that on the hearing of said cause he may have such relief in the premises as shall agreeable to equity and good conscience.

EDWIN C. LITCHFIELD,
By EMMONS, VAN DYKE & HAMILTON, *Att'ys.*

194 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

Personally appeared before me, on this 2nd day of July, A. D. 1861, Russel Sage, who, being by me duly sworn, did depose and say that he has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein state to be on information and belief, and as to those matters he believes it to be true. This deponent further says that he is now the legal and equitable owner of the judgment set forth in said petition; that the same has been assigned to him by said petitioner, but that the instrument by which said judgment is assigned is not now in this State.

FR. BLOODGOOD,
Commissioner District Court U. S., District of Wis.

Petition allowed.

Whereupon it is ordered by the court that the said Edwin C. Litchfield be, and hereby is, made a party defendant to this suit, and that the said bill may be amended accordingly, and that he have leave to file his answer thereto; and same day (7th September, 1861) petitioner filed his answer, as follows:

District court of the United States for the district of Wisconsin, in equity.

Answer of E. C. Litchfield.

JAMES T. SOUTTER, GREEN C. BRONSON, SHEPARD KNAPP, trustees,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY AND OTHERS.

The separate answer of Edwin C. Litchfield to the complainants' bill of complaint in the above-entitled cause respectfully shows to the court:

That on the 5th day of October, 1858, by the consideration and judgment of the district court of the United States for the district of Wisconsin, he, the said Edwin C. Litchfield, recovered a judgment in said court against the La Crosse and Milwaukee Railroad Company, for the sum of twenty-six thousand three hundred and thirty-two dollars and seventy-five cents, damages, and twenty dollars and seventy-six cents, costs; that said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated; that there is actually and equitably due upon said judgment the sum of $26,353 51, together with the interest thereon from the 5th day of October, A. D. 1858.

That legal title to said judgment at the time of the filing of the complainants' bill of complaint was and still is of record in the said Edwin C. Litchfield, as appears by the records of said district court.

The said Edwin C. Litchfield, further answering, shows to this hon-
195 orable court that Russell Sage is now the equitable owner of the aforesaid judgment.

EDWIN C. LITCHFIELD,
By EMMONS, VANDYKE & HAMILTON, *Att'ys.*
EMMONS, VANDYKE & HAMILTON, *Sol'rs and of counsel.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

Be it remembered, that on the 2nd day of July, A. D. 1861, personally appeared before me Russell Sage, who, being by me duly sworn, did depose and say that he had read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters that he believes the same to be true. Deponent further says that he is now the legal

and equitable owner of the judgment set forth in said answer; that the same has been assigned to him by said Edwin C. Litchfield, but that the instrument by which said judgment is assigned is not now in this State

FR. BLOODGOOD,
Commissioner District Court U. S. for Dis. of Wis.

Sept. 16th, 1861.—Receiver's report for month of August, 1861, filed.

October 7th, 1861.—This day came Winfield Smith, Jerome R. Brigham, and I. A. Lapham, masters to whom reference was made, and filed their report, as follows:

196 *Masters' report.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp, trustees, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, *et als.* } In equity.

To the Hon. A. G. Miller, judge:

In pursuance and by virtue of an order of reference made in this cause of the eleventh day of March, A. D. 1861, and of an order supplementary thereto, made on the twenty-first day of March, A. D. 1861, we, the undersigned, Winfield Smith, a master, and Jerome R. Brigham and Increase I. Lapham, special masters of this court, do respectfully report:

That we have been attended by the counsel for the parties, and have taken proofs in regard to the matter referred by the said order, in addition to that on file, which proofs are herewith returned, consisting of the copies of depositions and of exhibits, the originals whereof are returned by us and filed in this court in the other cause depending in said court, in which
197 the said depositions and exhibits have been taken, on an order of reference and order supplementary thereto, made of the same dates as above; in which cause Greene C. Bronson and James T. Soutter, trustees, are complainants, and the said La Crosse and Milwaukee Railroad Company and others are defendants.

We further report that we have passed over the line of the railroad of the said La Crosse and Milwaukee Railroad Company, and have examined those portions thereof where any of the work done by the defendant, Selah Chamberlain, as stated in the pleadings and testimony in this cause, was performed. Previous to which we gave notice of our intended examination to the counsel for the defendant, Chamberlain, and to the counsel for the defendants, Howard, Graham, and Scott, and the Milwaukee and Minnesota Railroad Company, informing them that they and engineers selected by them were at liberty to accompany us and assist in making such examination. We also endeavored, but without success, to procure the attendance and aid of Mr. Benjamin H. Edgerton, a civil engineer, whose testimony is among the depositions taken by us, as above stated.

We have ascertained and computed the amount of interest due and unpaid on the bonds described in the mortgage or deed of trust to the complainants set forth in the bill of complaint in this cause, and the real amount of the said bonds.

The real amount of those of the said bonds, numbered from one to one thousand nine hundred and ninety-one, inclusive, being 1,991 bonds first issued, of one thousand dollars each, at one hundred cents on the dollar, is one million nine hundred ninety-one thousand dollars, ($1,991,000.) The interest thereon, from February 1, 1857, to the date hereof, at seven per cent.,

is $638,779 17, (six hundred thirty-eight thousand seven hundred seventy-nine dollars and seventeen cents;) of which sum there is due upon the coupons attached to said bonds, and payable in February and August of each year, the sum of six hundred twenty-seven thousand one hundred sixty-five dollars, which sum has been due since the first day of August, A. D. 1861.

The real amount of those of the said bonds numbered from one thousand nine hundred ninety-two to two thousand five hundred, both inclusive, being 569 bonds of one thousand dollars each, allowed at forty cents on the dollar, is two hundred three thousand six hundred dollars, ($203,600.) The interest thereon, from February 1st, 1857, to date hereof, at seven per
198 cent., is $65,321 67, (sixty-five thousand three hundred twenty-one dollars and sixty-seven cents.)

The real amount of the remainder of the said bonds, being 1,450 bonds of one thousand dollars each, numbered from two thousand five hundred and one to three thousand nine hundred and fifty, both inclusive, and one hundred bonds of five hundred dollars each, numbered from one to one hundred, both inclusive, allowed at forty cents on the dollar, is six hundred thousand dollars, ($600,000.) The interest thereon from February 1st, 1857, to the date hereof, at the rate of seven per cent., is $192,500, (one hundred ninety-two thousand five hundred dollars.)

Thus the real amount of all the said bonds is $2,794,000, on which the interest unpaid to the date hereof is $896,600 84.

We have also ascertained the amount of the judgment of Newcomb Cleveland, mentioned in the said order, which is now equitably owned by the defendant, Selah Chamberlain. The same was rendered on the seventh day of October, A. D. 1857, for damages, $111,627 71; costs, $544 15. And there was paid thereon, under the order of this court, April 22, 1861, in full of interest and costs to that date, the sum of $28,801 92.

The interest on the amount then due, at seven per cent., from that date to

June 29th, 1861, is	$1, 455 56
Adding principal	111, 727 71
The total due was	113, 183 27
Upon which date was paid	10, 000 00
Leaving due, June 29th, 1861	103, 183 27
Upon which the interest to July 18th, 1861, at 7 per cent, is	381 20
The amount then due was	103, 564 47
Upon which date was paid	20, 000 00
Leaving due at that date	83, 564 47
On which interest to the date hereof is	698 68
The amount due at this date is	84, 263 15

Eighty-four thousand two hundred sixty-three dollars and fifteen cents.

199 We have also ascertained the amount of a certain judgment, rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, in the circuit court for Milwaukee County, on the twentieth day of April, A. D. 1859.

There is due thereon at the date hereof damages and costs	$3, 718 60
Interest to the date hereof	614 60
The amount due at this date is	4, 333 20

We have also ascertained the amount of a certain other judgment, rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, in the circuit court for Milwaukee County, on the twentieth day of April, A. D. 1859.

There is due thereon at the date hereof damages and costs..	$1,525 71
Interest to the date hereof.....	252 14
The amount due at this date is.....	1,777 85

We have also ascertained the amounts of the judgments of Sebre Howard, mentioned in his answer filed in this cause. The amount of his judgment rendered in the said circuit court is included and embraced in the judgment rendered in his favor by this court (on the law side thereof) on the twenty-eighth day of November, A. D. 1859; on which last-named judgment there is due at the date hereof:

Damages and costs.....	$16,379 86
Interest to the date hereof.....	2,013 39
The amount due at this date is.....	18,393 25

We have ascertained the amounts of the judgments of the defendants (Graham and Scott,) mentioned in their answer, filed in this cause; the amounts of their judgments rendered in the said circuit court are included and embraced in the judgment rendered in their favor by this court (on the law side thereof) on the eleventh day of January, A. D. 1860, on which last-named judgment there is due at the date hereof:

200	Damages and costs.....	$44,413 18
	Interest to the date hereof.....	5,092 78
	Amount due at this date.....	49,505 96

We have inquired into and ascertained the amount of the several specific claims of the defendant, Selah Chamberlain, and have taken and stated an account of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mortgages; and we have examined the said Chamberlain under oath, and have required him to produce his books, which he has accordingly done, and we have taken additional testimony to that on file. The account of the said Chamberlain, comprising the said claims, (exclusive of the judgment rendered in favor of Newcomb Cleveland, first above mentioned,) presented to us on his behalf, is herewith returned, marked Schedule First. The paper marked Schedule Second, herewith returned, contains his account with the said La Crosse and Milwaukee Railroad Company, as allowed and stated by us, showing the amount of his several specific claims against the said company, as allowed by us, omitting the last-mentioned judgment, and also the items and amounts disallowed by us, and also showing the amounts of his receipts, set-offs, and credits, and of such as should be made for his claims, including his receipts of revenues of the whole road; and showing also the balance due to him, including interest, at the date of this report, which balance we have ascertained to be four hundred eighteen thousand six hundred and sixteen dollars and seventy cents.

And we have made a separate statement as part of said Schedule Second, of the real and just amounts due on the second day of October, A. D. 1857,

on account of the items of indebtedness included in the judgment of the said Selah Chamberlain, rendered on that date, and mentioned in the pleadings in this cause, showing that the true amount of such items of indebtedness was, at that date, five hundred sixty-eight thousand nine hundred seventy-five dollars and seventy-seven cents, ($568,975 77.)

Of the several specific claims so allowed and stated in the said account is one under date of October 1st, 1858, for the moneys paid by the said Chamberlain, on and before that date, in the construction of the depot
201 building of the said company at La Crosse, to the amount of..... $12,190 95
On which interest to this date is..... 2,489 00

Making the amount at this date..... 14,679 95

Which sum is secured to the said Chamberlain, who holds the title to the said building and the land on which it stands.

And another of the claims so allowed, under date of March 1st, 1859, is for moneys paid by the said Chamberlain to Jacob A. Hoover for a lot of land in the city of Milwaukee, crossed by the said railroad and used for its purposes, amounting to..... $3,236 52
On which interest to date is..... 566 38

Making the amount at this date..... 3,802 90

Which sum is likewise secured to the said Chamberlain, who holds the title to the said lot.

We have also ascertained the whole amount of rolling stock on the whole road at the cost price. The amount thereof was, at the date of the filing of the bill of complaint in this cause, five hundred sixty-nine thousand six hundred thirty-five dollars and seventy-eight cents, and an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount $623,235 78.

And we have ascertained, and do further report, that of the said rolling stock, forty box-cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage executed to the complainants as set forth in the bill of complaint in this cause, the said cars having been purchased, and by the proceeds of a portion of the bonds to which this mortgage is collateral, and all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the seventeenth day of August, A. D. 1857.

In ascertaining the facts and amounts, and in making the computations herein above contained and referred to, we have been guided by the
202 opinions and instruction of this court communicated to us in connection with the said order of reference.

All which is respectfully submitted.

Dated Milwaukee, 1st September, 1861.

WINFIELD SMITH.
JEROME R. BRIGHAM.
I. A. LAPHAM.

Filed Oct. 7, 1861.

203 SCHEDULE THIRD.

The La Crosse and Milwaukee Railroad Company in account with S. Chamberlain, DR.

1857.					
Oct.	1.	For amount of judgment.....		$529,089 72	
		" liquidated damages....	$200,000		
		" less rec'd 200 2d mtg. bonds.....	100,000		
				100,000 00	
		" amount increased by re-estimate of E. W. Woodward and W. R. Sill		24,213 05	
		" draft on Bank of Republic, included in settlement but not paid....		5,000 00	
		" getting engines, cars, and iron over Wisconsin River.....		3,119 43	
Dec.	1.	" completing road to New Lisbon..		56,500 00	
		" bill for repairing gravel cars.....		318 77	
1858.					818,240 97
July	1.	" int. on 5 first items, 671,422 20, *a* 12 per cent..		69,527 99	
		" ditto on 2 last items, 56,818 77, *a* 12 per cent..		3,977 31	
					891,746 27
Mar.	1.	" this am't paid interest on $1,000,000 2d mortgage bonds.....		40,000 00	
		" ditto on 314,000 Mil. City do....		10,990 00	
		" exchange on above.....		1,529 70	
May	1.	" this am't paid interest on $950,000 1st mortgage bonds.....		38,000 00	
		" exchange on same.....		475 00	
July	1.	" interest on above to date, 12 pr. ct.		2,874 54	
					93,869 24
					985,615 31

204 CREDIT.

1857.				
Nov.	1.	By nett earnings in Oct.....	30,570 29	
Dec.	1.	" " " Nov.....	24,698 25	
1858.				
Jan'y	1.	" " " Dec.....	15,153 31	
Feb'y	1.	" " " Jan'y.....	12,505 92	
Mar.	1.	" " " Feb'y.....	10,171 18	
Ap'l	1.	" " " Mar.....	12,722 88	
May	1.	" " " Ap'l.....	19,152 02	
June	1.	" " " May.....	25,867 99	
July	1.	" " " June.....	23,389 73	
July	1.	Interest on above to date, *a* 12 pr. ct..	7,145 20	
				181,576 77
		Due Ja'y 1, 1859.....		804,038 77

DEBIT.

July.	For gravelling between Milwaukee and Beaver Dam, as per estimate....	9,806 50	

The La Crosse and Milwaukee Railroad Company in account with S. Chamberlain, DR.—Continued.

July.	For stone and cement for drawbridge at Portage.....	1,089 81		
		10,896 31	$804,038 74	
1858.				
July.	For amount bro't forward.....	10,896 31	804,038 74	
	" hauling pas'r engine and cars over dividing ridge.....	53 00		
	" bill of lumber for water tank....	76 58		
	" bill of chain and spikes.....	1,116 30		
Aug't	" " of labor for building road beyond La Crosse depot.....	2,556 75		
	" cost of La Crosse station buildings	12,190 00		
	" advance for right of way, &c.....	10,190 19		
	" paid J. A. Hoover, mortgage....	3,236 52		
1860.				
Jan'y 1.	" interest on 12,142 19 to date *a* 12 per cent.....	728 53		
" 1.	" ditto on 28,173 46 to date, *a* 12 per cent.....	1,408 67		
" 1.	" ditto on 804,038 74 to date, *a* 12 per cent.....	48,242 32		
			90,695 17	
1858.			894,733 91	
Sept. 1.	" this amount paid, interest on			
	" $1,000,000 2d mortgage bonds..	40,000 00		
	" ditto on $314,000 Mil. City do....	10,990 00		
	" advertising same.....	54 48		
	" exchange on "	510 44		
Nov. 1.	" this am't paid, int. on $950,000 1st mortgage bonds.....	38,000 00		
205	" this amount dep'd at U. S. Trust Co. for sinking fund on same..	12,000 00		
	" exchange and advertising.....	522 06		
1859.				
Jan'y 1.	" interest on above *a* 12 per cent..	3,072 60		
			105,149 58	
	CREDIT.			
1859.			999,883 49	
Aug't 1.	By nett earnings in July.....	25,171 43		
Sept. 1.	" " " Aug.....	13,630 41		
Oct. 1.	" " " Sep.....	37,120 31		
Nov. 1.	" " " Oct.....	28,031 16		
Dec. 1.	" " " Nov.....	22,744 43		
1860.				
Jan'y 1.	" " " Dec.....	12,517 22		
	Interest on above to Jan'y 1, 1859, *a* 12 per cent..	3,723 44		
			143,838 40	
	Amount due January 1, 1859.....		856,045 09	

The La Crosse and Milwaukee Railroad Company in account with S. Chamberlain, Dr.—Continued.

1859.			
Sep. 1.	For this am't paid interest on $1,000,000 2d mortgage bonds.....	40,000 00	
"	ditto on 314,000 Mil. City do.....	10,990 00	
		50,990 00	
1858.			
March.	For amount bro't forward.....	50,990 00	856,045 09
"	advertising interest.....	20 40	
"	exchange on same.....	765 12	
May 1.	" this amount paid, int. on $950,000 1st mortgage bonds.....	38,000 00	
"	advertising same.....	17 60	
"	exchange on "	570 25	
"	interest on above to July 1, 1859, *a* 12 per cent.....	51,362 70	
			144,576 61
			1,000,621 70

Credit.

1859.			
Feb'y 1.	By earnings in Jan'y, nett.....	6,415 71	
Mar. 1.	" " " Feb'y, "	2,450 62	
April 1.	" " " Mar., "	1,561 88	
May 1.	" " " Ap'l, "	575 21	
June 1.	" " " May, "	14,025 53	
July 1.	" " " June, "	18,175 59	
"	interest on above to July 1, '59, *a* 12 per cent.....	617 40	
			43,821 94
206	Amount due S. C., July 1, 1859.....		956,799 76
Augt' 1.	By earnings in July, nett.....	662 10	
Sept. 1.	" " " Aug't, "	19,308 98	
Oct. 1.	" " " Sept., "	66,260 48	
Nov. 1.	" " " Oct., "	71,980 37	
Dec. 1.	" " " Nov., "	40,047 85	
"	interest on above to Jan'y 1, 1860, *a* 12 per cent.....	4,633 45	

Debit.

For interest on 956,799 76 to Jan'y 1, 1860, *a* 12 per cent.....		57,407 98
		1,014,207 74
		202,897 23
1860		811,310 51
July 1. "	interest from Jan'y 1, '60, to July 1, '60, *a* 12 per cent.....	48,678 63
		850,989 14

The La Crosse and Milwaukee Railroad Company in account with S. Chamberlain, Dr.—Continued.

1861.	Bro't forward		850, 989 14
Jan'y 1.	" interest from July 1, '60, to Jan'y 1, '61, *a* 12 per cent		51, 599 34
1861.			911, 588 48
July 1.	" interest from Jan'y 1, '60, to July 1, '61		54, 695 30
			966, 283 78
	" loss on steamer Keokuk	11, 000 00	
	" interest to July 1, '61, as p. statement an'ex'd	7, 238 88	
		18, 238 88	
1861.			
July 1.	For amount bro't forward	18, 238 88	966, 283 78
	" additional loss on Keokuk	2, 104 00	
	" interest on last item, say 1 year	252 48	
			20, 595 36
			986, 879 14
	Credit.		
	Deduct outstanding balances Dec. 1, 1859, due from the road	78, 450 36	
	Add for error in car spring ac	308 01	
		78, 758 37	
	Less amounts of these balances paid and assumed by S. Chamberlain, viz:		
	S. Chamberlain & Co.'s ac... 4,185 07		
	S. Chamberlain coal ac..... 2,247 62		
	D. L. Wells's ac..... 1,965 56		
	Pay-roll ac..... 1,570 39		
		9, 968 64	
		68, 789 73	
207	Less payment made by S. Chamberlain on ac. of these balances, viz:		
	Earnings prior to Dec. p'd trustees..... 21,085 49		
	Cash paid car notes..... 11,115 45		
	Ditto do. 3,080 26		
	Balance due the road Dec. 1, collected by the trustees. 115 63		
	Cash at sundry times..... 11,460 00		
		47, 256 83	
		21, 532 90	
	Subject also to deductions, as follows: Operating expenses of trustees, viz:		
	S. Chamberlain & Co.'s bills. 715 30		
	Loyd & Supplee... 57 00 / Mill. Gas Company. 44 10	101 10	
	D. W. Keyes..... 230 23		
	Beck & Gardner 110 00		
		1, 156 63	

Bro't forward	$1,156 63	21, 532 90	
Less Keokuk bill p'd by trustees for S. C.	573 74		
		582 89	
		20, 950 01	
Interest on above from Jan'y 1, '59, to July 1, '61		6, 232 31	
			27, 182 32
			$959, 696 82
Dec. Add loss on Keokuk paid by trustees and not before charged			573 74
Int. 2 years and 7 mo			177 85
Real estate coupons paid Julusch Dec'r 18th, 1858		254 74	
Int. from Dec'r 18, '58, to July 1, '61		77 52	
			332 26
			960, 780 67

208 *Statement of the real amount of the items of indebtedness included in the judgment of Selah Chamberlain, October 2, 1857.*

Balance of ac. as stated in Exhibit No. 10	110, 366 72	
Construction of 43 miles of main line between Portage City and New Lisbon	516, 000 00	
Construction of 2 32-100 miles of side track on same	27, 840 00	
Grading, bridging, and masonry proportionally equal in value	168, 275 00	
Extra haul, over 500 feet, as per contract	27, 537 30	
Grubbing and clearing, *a* $300 per mile, proportional	18, 620 00	
Solid rock excavation, 118,557 c. yds., *a* 75 c.	88, 917 75	
Loose do. do. 2,400 do. *a* 50 c.	1, 200 00	
Roadways, bridges, cattle passes, and changing highways, extra	11, 700 00	
Excavation of foundation and timber on same	6, 500 00	
Bank wall, 3,500 yds., *a* $3 00 pr. c. yd	10, 500 00	
Tunnel approach excavation, extra work, 24,653 c. yds., *a* $2 00 pr. c. yd	49, 306 00	
Tile bridging	2, 500 00	
Tunnel culvert at Kilbourn City	2, 300 00	
Ballasting 45 32-100 miles, *a* $2,000 pr. mile	90, 640 00	
		1, 132, 202 77
Deduct from the above—		
Payments and credits as stated in Exhibit No. 10	501, 227 00	
Amount necessary to complete track laying, ballasting, and grading on line between Portage City and New Lisbon	62, 000 00	
		563, 227 00
Balance		568, 975 77

SCHEDULE FOURTH.

Page 1. DR. *The La Crosse & Milwaukee R. R. Co. in account with Selah Chamberlain.* CR. Page 1.

1857.				1857.		
Oct. 2	To real amount due on items included in judgment	$568,975 77		Oct. 31	By net earnings for October	$30,570 29
	Grading depot grounds at Kilbourn City	973 20			Balance	551,885 09
	Damages for detention and change of line at New Lisbon	1,121				
	Draft on Bank of Republic, Sept. 4, '57, included in settlement but not paid	5,000				
	Getting engine, cars, and iron over the Wisconsin River	3,119 43				
31	Interest on above sums, at 7 pr. ct., from Oct. 2d to date	3,265 98				
		$582,455 38				$582,455 38
Nov. 1	To balance brought forward	551,885 09		Nov. 30	By net earnings for November	24,698 25
30	Interest to date	3,219 32			Balance	530,406 16
		555,104 40				555,104 41
Decem. 1	To balance bro't forward	530,406 16		Dec. 31	By net earnings for December	15,153 31
	Completing track-laying, ballasting, and grading on line from Portage City to New Lisbon	62,000				581,029 18
	Repairing gravel cars	318 77				
31	Interest to date	3,457 56				
		596,182 49				596,182 49

1858.			1858.		
Jan'y 1	To balance bro't forward	581,029 18	Jan. 31	By net earnings for January	12,505 92
31	Interest to date	3,389 33		Balance	571,912 59
210		584,418 51			584,418 51
Feb. 1	To balance bro't forward	571,912 59	Feb. 28	By net earnings for February	10,171 18
28	Interest to date	3,336 15		Balance carried over	565,077 56
		575,248 74			575,248 74
Page 2.					Page 2.
1858.			1858.		
March 1	To balance bro't over	$565,077 56	March 31	By net earnings for March	$12,922 88
	Interest on 2d mort. bonds paid	39,840		Balance	607,839 31
	Do city bonds ($114,000) paid	3,937 50			
	Do city bonds ($200,000) paid	6,790			
	Exchange on same, 3 per ct., paid	1,517 02			
31	Interest to date	3,600 11			
		620,762 19			$620,762 19
April 1	To balance bro't forward	607,839 31	April 30	By net earnings for April	19,152 02
30	Interest to date	3,545 71		Balance	592,233
		611,385 02			611,385 02
May 1	To balance bro't forward	592,233	May 31	By net earnings for May	25,867 99
	Interest paid on 1st mort. bonds	37,810		Balance	608,356 19
	Exchange on same	473			
31	Interest to date	3,678 18			
		634,224 18			634,224 18
June 1	To balance bro't forward	608,356 19	June 30	By net earnings for June	23,389 73
30	Interest to date	3,548 74		Balance	588,515 20
		611,904 93			611,904 93

1858.				1858.		
July 1	To balance bro't forward	588,515 20		July 31	By net earnings for July	25,171 43
	Stone and cement for drawbridge at Portage.	1,089 81			Balance	569,126 08
	Hauling engine and cars over dividing ridge.	53				
	Lumber for water tanks	76 58				
	Chairs and spike	1,116 30				
31	Interest to date	3,446 62				
		594,297 51				594,297 51
Aug. 1	To balance bro't forward	569,126 08		Aug. 31	By net earnings for August	13,630 41
31	Interest to date	3,319 90				558,815 57
		572,445 98				572,445 98
Page 3.						Page 3.
Sept. 1	To balance bro't over	558,815 57		Sept. 30	By net earnings for September	37,120 31
	Interest on 2d mortg. bonds paid	39,680			Balance	576,165 58
	Do ... city bonds ($114,000) paid	3,797 50				
	Do ... city bonds ($200,000) paid	6,877 50				
	Advertising in N. York	54 48				
	Exchange, 1 per cent	504 09				
30	Interest to date	3,556 75				
		613,285 89				613,285 89
Oct. 1	To balance bro't forward	576,165 58		Oct. 31	By net earnings for October	28,931 16
	Building road beyond La Crosse depot	2,656 75			Balance	570,885 76
	Disbursements on La Crosse depot	12,190 95				
	Payments for right of way	5,325 00				
31	Interest to date	3,478 64				
		599,816 92				599,816 92

Nov. 1	To balance brought forward	570,887 76		Nov. 30	By net earnings for November	22,744 43
	Interest on 1st mortg. bonds paid.	36,940			Balance	601,211 42
	Paid sinking fund on same	12,000				
	Advertising	21 85				
	Exchange	489 61				
30	Interest to date	3,618 63				
		623,955 85				623,955 85
Dec. 1	To balance bro't forward	601,211 42		Dec. 31	By net earnings for December	12,517 22
	Paid for right of way	240				592,442 66
31	Interest to date	3,508 46				
		604,959 88				604,959 88
1859.				1859.		
Jan'y 1	To balance bro't forward	592,442 66		Jan'y 31	By net earnings for January	6,415 71
	Paid for right of way	1,010			Balance carried over	600,618 69
	Do. to interest	254 74				
	Gravelling between Milwaukee & Beaver Dam	9,806 50				
31	Interest to date	3,520 50				
		607,034 40				607,034 40
Page 4.						Page 4.
1859.				1859.		
Feb'y 1	To balance bro't over	600,618 69		Feb'y 28	By net earnings for February	2,450 62
	Paid for right of way	579			200 second mortg. bonds, at 50 per c't	100,000 00
28	Interest to date	3,056 97			Balance	502,254 04
		604,704 66				604,704 66

March	1	To balance bro't forward	502,254 04	March	31	By net earnings for March	1,561 88
		Interest paid on 2d mortg. bonds	39,880	April	30	Do ..... April	575 21
		Do ..paid city bonds, ($114,000)	3,710	May	31	Do ..... May	14,025 53
		Do .....city bonds, (200,000)	6,387 50			Balance	587,706 15
		Advertising	22 40				
		Exchange	750				
		Right of way to J. A. Hoover	3,236 52				
May	1	Paid interest on 1st mortg. bonds	37,100				
		Advertising	17 60				
		Exchange	556 75				
	31	Interest up to March 31st	3,244 73				
		Do ..... April 30th	3,244 73				
		Do ..... May 31st	3,464 50				
			603,868 77				603,868 77
June	1	To balance bro't forward	587,706 15	June	30	By net earnings for June	18,175 59
	30	Interest to date	3,428 28			Balance	572,958 84
			591,134 43				591,134 43
July	1	To balance bro't forward	572,958 84	July	31	By net earnings for July	662 10
	31	Interest to date	3,342 25	Aug.	31	Do ..... August	19,308 98
Aug.	1	Paid for right of way	1,773 21			Balance	561,455 82
	31	Interest to date	3,352 60				
			581,426 90				581,426 90
Sept.	1	To balance bro't forward	561,455 82	Sept.	30	By net earnings for September	66,264 48
	30	Interest to date	3,275 15			Balance	498,466 49
			564,730 97				564,730 97
Oct.	1	To balance bro't forward	498,466 49	Oct.	31	By net earnings for October	71,980 37

	31	Interest to date	2,907 72		Balance carried over	429,393 84
			501,374 21			501,374 21
214						
Page 5.						Page 5.
1859.				1859.		
Nov.	1	To balance bro't over	$429,393 84	Nov.	30 By net earnings for November, paid to Chamberlain	$18,446 73
	30	Interest to date	2,504 79		Other receipts applicable to operating expenses & charged to the account of "operating expenses," as paid by Chamberlain, but which were paid by trustees and not by Chamberlain	68,789 73
					Balance	344,662 17
			$431,898 63			$431,898 63
Dec.	1	To balance bro't forward	344,662 17			
		Paid for right of way	1,262 98			
		Accounts paid by Chamberlain & afterwards charged to "operating expenses," to wit:				
		S. Chamberlain & Co	715 30			
		D. W. Keyes	230 23			
		Beck & Gardner	110			
		Lloyd & Supplee	57			
		Milwaukee Gas Co	44 10			
		Cash paid car notes	14,195 71			
		Trustees (P. Dow)	11,460			
		Old coupons	195			
1861.						
Sept.	1	Interest to date	45,684 21			
			418,616 70			
				1861.		
Sept.	1	To balance bro't forward	$418,616 70	Sept.	1 By balance	418,616 70

215 October 9, 1861., receiver's report for month of September 1861, filed.

And on the 31st day of October, 1861, came the defendant Selah Chamberlain by his solicitors and filed his exceptions to master's report, as follows, viz:

216 District court of the United States for the district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Selah Chamberlain, and others, defendants.

Exceptions taken to the report of Winfield Smith, a master, and Jerome R. Brigham and Increase A. Lapham, special masters of this court, bearing date the first day of September, A. D. 1861, and filed on the seventh day of October, A. D. 1861, on the part of the defendant, Selah Chamberlain.

First exception. For that the said masters have not certified and allowed in their report the whole amount of the balance of account due to the defendant Chamberlain from the La Crosse and Milwaukee Railroad Company, as produced and proven before the said masters on the part of the said Chamberlain.

The items of said Chamberlain's account against said company, together with all sums of money received by him as partial payments or set-offs thereto, are stated in the paper annexed to the report of said masters, and marked "Schedule Third."

The evidence proving such account (exclusive of the times or periods when rests should be made on the proper dates, when the application of payments or set-offs should be made) is as follows:

Record of judgment in Chamberlain's favor, Oct. 2d, 1857. Testimony accompanying master's report, page 24.

Lease or mortgage to Chamberlain, and the contemporaneous agreement of Sept. 26, 1857. Testimony, page 79.

Also testimony submitted by defendant Chamberlain, and received at the hearing.

Depositions referring to pages of testimony returned by and referred to in master's report, as follows:

Edgar C. Jennings, p. 7 to 21; Dwight W. Keyes, p. 21 to 42; Daniel L. Wells, p. 42 to 45; Royal D. Jennings, p. 45 to 47; Jno. M. Kimball, p. 49 to 50; William R. Sill, p. 50 to 53.

Proofs and exhibits relating to money paid Hoover, page 53, and exhibit returned marked No. 7.

Dwight W. Keyes, p. 53 to 54; A. G. Miller, jr., p. 54 to 57; Edwin H. Goodrich, p. 57 to 67; Selah Chamberlain, p. 67 to 79, and 83 to 91, 95 to 105.

Proofs and exhibits referred to on page 79, as Schedules A, B, C, and D, and on page 80 as F.

217 Exhibits referred to on page 82, marked No. 8 and 9.

The following depositions and exhibits thereto annexed, referred to on pages 82 and 83, and returned and marked "Exhibit No. 29:"

Charles S. Gregg, Thomas Daniel, Don J. Whittemore, Isaac C Brewer, John McLean Stoughton, William R. Sill, Moses Kneeland, Ezekiel W. Woodward; Dwight W. Keyes, pages 92 to 93; Henry L. Palmer, pages 106 to 116; Dwight W. Keyes, pages 115 to 123; E. H. Goodrich, pages 123 to 124; Daniel L. Wells, pages 126 to 130; Selah Chamberlain, pages 3c to 41c; Selah Chamberlain, pages 49c to 51c.

Proofs referred to on pages 124 and 125 and Exhibits No. 38 and 39.

Second exception. For that the said masters have, in stating and certifying the accounts of said Chamberlain against the said La Crosse and Milwaukee Railroad Company, inquired into the consideration of the judgment rendered in this honorable court, on the law side thereof, on the second day of October, A. D. 1857, in favor of said Chamberlain and against said railroad company. Whereas said judgment was and is conclusive as between said Chamberlain and the said railroad company and as against all parties to this suit.

(See page 10 of the master's report and the "separate statement" there referred to as part of Schedule Fourth.)

Third exception. For that the said masters have certified in their report that the real amount which was due to said defendant Chamberlain, on the second day of October, A. D. 1857, on the items of indebtedness included in and which formed the consideration thereof, was the sum of $568,975 77, whereas they should have certified in such report that the real amount due to the said Chamberlain from said railroad company at the date of said judgment, and upon the items of indebtedness intended to be included therein, was the sum of $653,303 57. (See page 10 of the master's report, where they so certify, "and the separate statement" there referred to as part of Schedule Fourth.) And that the real amount of the indebtedness intended to be included in said judgment was the sum of $653,303 57, see Selah Chamberlain's testimony, reported by said masters and returned as part of their report, pages 67 to 79, 83 to 91, 95 to 105, 3c to 41c, and 49c to 51c; H. L. Palmer's, p. 106 to 116; depositions of Charles S. Gregg, Thomas Daniel, Don J. Whittemore, Isaac C. Brewer, John McLean Stoughton, William R. Sill, Moses Kneeland, and Ezekiel W. Woodward, referred to by masters in testimony by them returned on pages 82 and 83, as contained in Exhibit No. 29, accompanying report.

218 Fourth exception. For that the said masters have in such report certified and allowed as due to the defendant Chamberlain, on the said second day of October, 1857, and as forming part of the consideration of said judgment for "tunnel approach excavation," 24,653 cubic yards at $2 per yard, amounting to the sum of $49,306, whereas they should have certified and allowed 739,573 at $2 per cubic yard, amounting to the sum of $147,914 60. (See the 12th item contained in the "separate statement" report as part of Schedule Fourth.)

And that they ought to have certified and allowed 739,573 at $2 per cubic yard, amounting to the sum of $147,914 60, see all of the testimony, proofs, and exhibits referred to in the above third exception.

Fifth exception. For that the said masters have in such report certified and allowed to the said Chamberlain interest on his said account at the rate of seven per centum per annum, whereas the said masters should have certified and allowed interest at the rate of twelve per centum per annum thereon. (See the lease or mortgage to Chamberlain and the contemporaneous agreement of 26th September, 1857, referred to by masters on the 79th page of testimony returned.)

Sixth exception. For that the said masters have in such report certified and allowed to the said Chamberlain upon his claim for moneys paid by him on or before October 1st, 1858, in the construction of depot buildings at La Crosse, interest at the rate of seven per centum per annum, whereas they should have certified and allowed interest at the rate of twelve per centum per annum. (See lease from Spencer and Reynolds to Chamberlain, dated 29th July, 1859, and referred to as filed in the cause by the masters on page 50 of the testimony returned; also page 11 of the masters' report, where they report this item of Chamberlain's "special claims.")

Seventh exception. For that said masters have in such report allowed and certified to the said Chamberlain, upon his claim for moneys paid by him to Jacob A. Hoover for a lot of land in the city of Milwaukee crossed by the said railroad and used for its purposes, interest at the rate of seven per centum per annum, whereas they should have allowed and certified thereon interest at the rate of ten per centum per annum. (See proofs and exhibits relating to money paid by Hoover, page 53 of testimony, and exhibit returned marked "No. 7.")

219 Eighth exception. For that the said masters have not in such report allowed and certified in favor of and to the said Chamberlain any part of an item in his account, produced and proven before said masters, of two hundred thousand dollars, liquidated damages and interest thereon at the rate of twelve per centum per annum, and which item and claim for damages is fully mentioned and specified in the agreement reported by said masters as proven before them between the said Chamberlain and said railroad company, bearing date the twenty-sixth day of September, A. D. 1857. (See agreement contemporaneous with lease or mortgage, referred to on page 79 of testimony—copy as proven in testimony filed and used by Chamberlain at the hearing. See also Selah Chamberlain's testimony, on pages of testimony 87 to 91.)

Ninth exception. For that the said masters have not in such report allowed and certified in favor of and to the said Chamberlain the item in his account, produced and proven before said masters, of "loss on the steamer Keokuk," with interest thereon. (See Chamberlain's account, Schedule Third; account as allowed by masters, Schedule Fourth. See also Chamberlain's deposition; also deposition of E. H. Goodrich, pages 60 to 67.)

Tenth exception. For that the said masters have in such report stated and certified as the principal sum payable upon the mortgage bonds mentioned in the bill of complaint in this cause, being one thousand bonds of one thousand each, at fifty cents on a dollar, amounting to the sum of $500,000, whereas the said masters should have stated and allowed and certified in such report the said mortgage bonds at the principal sum of $1,000,000.

Eleventh exception. For that the said masters have in such report certified and stated that in ascertaining the facts and amounts, and in making the computations in such report contained and referred to, they had been guided by the opinions and instructions of the court, communicated to them in connection with the order of reference in said cause.

EMMONS, VAN DYKE & HAMILTON,
Solicitors and of counsel for the defendant Selah Chamberlain.

220 And afterwards, on the 2d day of November, 1861, came the complainants, by their solicitors, and filed their exceptions to the masters' report, as follows, viz:

221 *Complainants' exceptions to masters' report.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp
against
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.
} In equity.

Exceptions taken by the said complainants to the report of Winfield Smith, as master, and Jerome R. Brigham and Increase A. Lapham, special masters

of this court, to whom it was referred to ascertain, compute, and report, among other things, as to the amount of interest really due upon and principal secured by the bonds issued under the deed of trust or mortgage given to your orators, and described in the complainants' bill of complaint, and also to ascertain and report the whole amount of rolling stock on the whole road, and which of the mortgages on said road covered and included said rolling stock.

1st. For that the said master and special masters have in and by their said report certified that the real amount of the bonds secured by the
222 mortgage given to said complainants, numbered from 1992 to 2500, both inclusive, being 509 bonds of one thousand dollars each, was two hundred and three thousand and six hundred dollars, and that the interest thereon, from February 1st, 1857, to the date of said report, at 7 per cent., was sixty-five thousand three hundred and twenty-one dollars and sixty-seven cents; whereas the said master and special masters ought to have certified that the real amount of the principal of the said bonds was $509,000 00, and the interest thereon from February 1st, 1857, to date of said report, at seven per cent., was $163,304 22.

2d. For that the said master and special masters have in and by their said report certified that the real amount of said bonds, numbered from 2501 to 3950, both inclusive, being 1,450 bonds of $1,000 each, and one hundred of said bonds of $500 each, numbered from one to one hundred, both inclusive, as allowed by them, was six hundred thousand dollars, and the interest thereon from February 1st, 1857, to the date of said report, at seven per cent., was $192,500. Whereas the said master and special masters ought to have certified that the real amount of principal of said bonds was $1,500,000, and the interest due thereon from February 1st, 1857, to the date of said report, at seven per cent., was $481,250 00.

3d. For that the said master and special masters have in and by their said report certified that the real amount of all the said bonds was $2,794,000 00, on which the interest unpaid to the date of said report is $896,600 84, making in all the amount of $3,690,600 84; whereas the said master and special masters ought to have certified that the real amount of principal unpaid of said bonds was $4,000,000 00, and the interest due and unpaid thereon $1,283,333 39, making in all the amount of $5,283,333 39.

4th. For that the said master and special masters have, in and by their said report, certified that all the rolling stock on said road (except 40 box cars which are specially named in said report) was covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the 17th day of August, A. D. 1857; whereas the said master and special masters ought to have certified that all the rolling stock on said road (except that purchased by the receiver since the commencement
223 of this suit, amounting to the sum of $53,600,) was covered by and included in the mortgage given to the said complainants, and described in the bill of complaint in this cause, and that said mortgage was a first and prior lien on said rolling stock, superior to all other liens; and that as to the rolling stock purchased by said receiver above mentioned, 105.200 thereof was caused by the mortgage described in the complaint, and that to that extent the complainants' said mortgage was a first lien thereon.

Wherefore said complainants except to the said master and special masters' said report, and appeal therefrom to the judgment of this honorable court.

CARY & PRATT,
Solicitors for Complainants.

Filed Nov. 2d, 1861.

224 And afterwards, on the 4th day of November, 1861, came J. Albert Helfenstein, by his solicitors, and filed his petition as follows, viz:

225 United States dist. court, district of Wisconsin.

GREENE C. BRONSON, SHEPHERD KNAPP, AND JAMES T. SOUTTER, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, *et als.*
} In equity.

To the Hon. Andrew G. Miller, judge, &c.:

The petition of J. Albert Helfenstein respectfully represents that he is one of the defendants in the above-entitled cause; that it appears from the pleadings and proof in said cause that, on the twenty-sixth day of September, A. D. 1857, the defendant, La Crosse and Milwaukee Railroad Company, duly executed and delivered to your petitioner a mortgage, being the same set forth in the answer of your petitioner on file in this cause, which said mortgage was on the twenty-eighth day of September, A. D. 1857, duly recorded, as provided by law, in the office of secretary of state of the State of Wisconsin; that said mortgage to your petitioner was given to secure the payment of the principal and interest upon certain bonds or ob-
226 ligations of said the La Crosse and Milwaukee Railroad Company thereunder to be issued, and to be secured thereby; that your petitioner in and by said mortgage was constituted the trustee of such persons as should become the owners and holders of said bonds; that said company did issue its said obligations or bonds, to be secured by said mortgage, and disposed of them to various persons, and that of said bonds so issued there are now outstanding and unpaid the amount of three hundred and fifty-three thousand dollars in the aggregate, which are all held and owned by bona fide purchasers, who paid a valuable consideration therefor; that said bonds are all over-due, the principal thereof being made payable on the 1st day of October, A. D. 1860, three years from this date; that the interest thereon was payable semi-annually, and that nothing either of principal or interest has ever been paid thereon.

And your petitioner further shows that of said bonds so issued a portion of them were issued and delivered in payment of right of way over land upon which the railroad of said company was built; a portion thereof were issued and delivered in payment for freight cars now in actual use upon the line of said road; a portion were issued and delivered in payment for painting done upon the depots and other buildings and property of said company; a portion thereof were issued and delivered in payment of insurance
227 upon the railroad iron now in use on said railroad while in transit to this State; a portion were issued and delivered in payment of the expenses of transportation of said cars and other property of said company; and a portion thereof were issued and delivered in payment for work done and materials used in the construction of said road, and that the property in payment of which the said bonds were issued is covered by the mortgage to the complainants in this case, or is claimed to be so covered. Your petitioner further represents that many, and, in fact, nearly all, of the bonds so issued and delivered in payment of right of way, cars, painting, insurance transportation, work, and materials used in construction as aforesaid, are now held and owned by the persons who furnished said right of way, painting, insurance, transportation, work, and materials, and to whom they were originally issued and delivered.

Your petitioner further represents that the defendant Selah Chamberlain on the second day of October, A. D. 1857, recovered in this court a judgment against said La Crosse and Milwaukee Railroad Company for the sum of $629,089 72 damages and $15 50 costs, and that the defendant Newcomb Cleveland, on the seventh day of October, A. D. 1857, also recovered a judgment in this court against said railroad company for the sum of $111,727 71 damages and $544 15 costs; that in April, A. D. 1861, by an order made in this action, the receiver in this cause was directed to pay
228 upon said judgment so recovered by said Cleveland the sum of $28,801 92; and that on the 29th day of June, A. D. 1861, said receiver was further ordered to pay upon said judgment the sum of $10,000; and on the 18th day of July, A. D. 1861, said receiver was ordered to pay on said judgment the further sum of twenty thousand dollars, making in all the sum of $58,801 92.

And your petitioner further represents that on the 6th day of May, A. D. 1861, said receiver was ordered to pay to said complainants' solicitors the sum of $25 00, to be receipted by them; that on the same day said receiver was further ordered to pay to the holders of the first 1,991 bonds issued under the mortgage to the complainants, to be receipted by J. S Brown, esq., their attorney of record, the further sum of $2,500; that on the 29th day of June, A. D. 1861, said receiver was further ordered to pay to said complainants, to apply on interest on said first 1,991 bonds, the sum of $20,000; and that on the 18th day of July, A. D. 1861, said receiver was further ordered to pay to said complainants, on account of interest on the first 2,500 bonds, the sum of $20,000; and said receiver was ordered to expend in the purchase of cars, &c., not to exceed the sum of $53,000.

Your petitioner further represents that in and by said mortgage or trust deed constituting your petitioner as trustee, as hereinbefore mentioned,
229 it is expressly stipulated and provided that said La Crosse and Milwaukee Railroad Company would from time to time pay all such costs, charges, and expenses as your petitioner might sustain or be put to in the execution of the trust therein mentioned, as aforesaid, and to keep your petitioner fully indemnified in the premises. Your petitioner further represents that he has been put to considerable costs, charges, and expenses in the execution of said trust, and has become liable for other expenses, costs, and charges, which he will be obliged to pay; and that said expenditures and liabilities consist mainly of counsel fees, costs, and expenses paid and to be paid in the defence of this suit, and in the prosecution of another suit growing out of said mortgage, as will appear by the subjoined bill.

Your petitioner therefore prays that an order may be made directing the receiver in this cause to pay to your petitioner, to be receipted by your petitioner's solicitors of record, such sum of money, out of the funds in his hands as receiver, as will pay said costs and expenses and indemnify your petitioner against the same. And your petitioner will ever pray, &c.

J. ALBERT HELFENSTEIN,
By BUTLER, BUTTRICK & COTTRILL and
PALMER & STARK, *his Solicitors.*

J. Albert Helfenstein, trustee, to Butler, Buttrick & Cottrill, DR.
'60 and '61.

To retainer and services in suit of Bronson *et al. vs.* La C. and M. R. R. Co., self, and others in U. S. court to date, Nov. 2d, 1861.	$2, 500 00
To expenses paid in same, going to New York to take testimony, and paid commissioner's fees therein, &c	216 88
To other sundry expenses—$1 95, $2 04, $0 66, $8 00.....	12 65

J. Albert Helfenstein, trustee, &c., to Palmer & Stark, Dr.

1860 and '61.

To retainer and services in suit of Bronson and *als.* vs. La C. and M. R. R. Co., self, and *als.*, in U. S. court to date.....	$2, 500 00
To sundry costs and expenses paid for you as such trustee, viz:	
Copy bill.....	13 50
Expenses to Pierce Co., $25 00; do. to Prescott, $15 00.....	40 00
Printing, &c., and other expenses, $105, 60c., and $62 70.....	168 30
Total due and paid to date, Nov. 2, 1861.....	5, 451 33

On consideration whereof it is ordered that the receiver do pay to said petitioner for said purpose three thousand four hundred and fifty-one dollars and thirty-three cents, ($3,451 33,) the same to be receipted for
230 by said petitioner, J. Albert Helfenstein, or his solicitors of record, Messrs. Butler, Buttrick & Cottrill and Messrs. Palmer & Stark.

November 19, 1861, receiver's report for month of October, 1861, filed.

And afterwards, on the 29th day of November, 1861, came the parties by their counsel, and the several exceptions to the report of the masters came on to be heard, and, not being concluded, the further hearing was adjourned until to-morrow morning.

November 30, 1861, this day came the parties, by their counsel, and the hearing of the several exceptions to the report of the masters was resumed, and, not being concluded, the further hearing was adjourned until Monday morning next.

December 2, 1861, this day came the parties, by their counsel, and the hearing of the several exceptions to the report of the masters was resumed, and, not being concluded, the further hearing was adjourned until to-morrow morning.

December 3, 1861, this day came the parties, by their counsel, and resumed the argument of the exceptions to the report of the masters, and, the said argument being concluded, the court took the same under examination.

December 9, 1861, receiver's report for month of November, 1861, filed.

231 And afterwards, on the 7th day of January, 1862, came the parties, by their counsel, and on consideration of the several exceptions to the report of the masters and the argument of counsel, it is ordered by the court that the first, second, and third exceptions of complainants to said report be, and hereby are, overruled. And it is further ordered by the court that the fourth exception of complainants be, and is hereby, overruled as to the forty box cars which are covered by this mortgage. And it is further ordered by the court that on said exception the said report be so modified that all the other rolling stock that was on said road when the receiver was appointed, except the said forty box cars, is covered by and included in the first mortgage of the road from Milwaukee to Portage City; and that all the rolling stock on said road that has been purchased or procured since the court has had possession, by its receiver, costing $147,942 63, be applied to the said first mortgage and the mortgage in this bill, in proportion to the net revenues on such portions of the road said mortgages respectively covered since the appointment of the receiver. And it is further ordered by the court that the sixth and seventh exceptions of Selah Chamberlain to said report be, and hereby are, allowed, and that the tenth exception of said Chamberlain to said report be, and hereby is, overruled. And it is further ordered that the remaining other exceptions of said Selah Chamberlain be held by the court for further consideration.

232 January 9, 1862.—Ordered by the court that the receiver pay to Selah Chamberlain sixteen thousand nine hundred and six dollars and sixty-four cents, ($16,906 64,) in full for depot buildings and grounds at La Crosse used for said road. But before said money is paid said Chamberlain shall convey to the La Crosse and Milwaukee Railroad Company all his interest in and to said premises. Said money may be receipted for by Messrs. Emmons & Van Dyke, the attorneys of said Chamberlain.

233 U. S. dist. court for the district of Wisconsin.

GREENE C. BRONSON, SHEPHERD KNAPP, AND JAMES T. SOUTTER
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

And now at this day comes Isaac Seymour, Fred. P. James, D. M. Hughes, B. Dawson, Francis Vose, Horace Galpin, and , trustees appointed by the holders of $3,881,000 in amount of the bonds issued under the mortgage given to the complainants, by Cary & Pratt, their counsel, and move the court for an order directing the receiver in this action to pay to said trustees the amount due on the coupons falling due August first, 1858, on all bonds held by them, (less the sum of $15,000 heretofore paid by the receiver to said complainants,) according to the terms of the decree of the court in this case, to wit, on the first 1,991 bonds the full amount of said coupons, on all bonds of $1,000 each above said 1,991 fourteen dollars, and all bonds of $500 the sum of seven dollars.

Filed March 5, 1862.

234 *Land grant mortgage.*

Deed of trust, made this thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty-six, (1856,) between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, as after mentioned, all of the city and State of New York, parties of the second part.

Whereas the Congress of the United States, by an act approved June 3, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," did enact as follows:

(Here follows said act.)

And whereas the legislature of said State of Wisconsin subsequently passed an act, approved October 11th, 1858, which is in the following words:

"An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,'" approved June 3, 1856.

(Here follows said act.)

And whereas the said railroad company, after the passing of said last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company, under its corporate seal, was on the same

234*a* day deposited in the office of the secretary of state:

And whereas said railroad company, for the purpose of constructing its road from Madison, by way of Portage City, to St. Croix River or Lake, has determined to borrow a sum of money not exceeding ten million of dollars, and to issue its bonds for the repayment of the moneys which may be borrowed, with the interest thereon, nine thousand of which bonds (exclu-

sive of the numbering and interest warrants or coupons) will be substantially in the following form: "United States of America, State of Wisconsin. The *The* La Crosse and Milwaukee Railroad Company. Know all men by these presents that the La Crosse and Milwaukee Railroad Company acknowledge themselves to be indebted to the bearer hereof in the sum of one thousand dollars, lawful money of the United States, for money borrowed for the construction of their road from Madison to the St. Croix River or Lake, which sum they agree to pay to the bearer hereof, on the first day of February, in the year of our Lord 1877, at the Bank of the Republic, in the city of New York, with interest at the rate of seven per centum per annum, payable in the city of New York semi annually, on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. Said railroad company reserves the right to satisfy and discharge this bond at any time before the principal becomes due, by paying to the holder thereof the sum of eleven hundred dollars, with the interest up to the time of such payment, so far as the same may not have been previously paid. This is one of nine thousand bonds, all of the same tenor, and numbered from 1 to 9000, respectively, which, with two thousand bonds for the sum of five hundred dollars each, numbered from 1 to 2000, respectively, make in the aggregate the sum of ten millions of dollars; to secure the payments of all which bonds a deed of trust has been executed by said railroad company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, conveying all such interest as said railroad company has acquired or may hereafter acquire in all the land granted to said railroad company by the act of the legislature of the State of Wisconsin, approved October 11, 1856, entitled 'An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute
234*b* the trust created by an act of Congress entitled "An act granting certain lands to the State of Wisconsin to aid in the construction of railroads in said State,"' approved June 3d, 1856, so far as the lands granted by said act of the legislature are applicable to the construction of the road of said railroad company from Madison, by way of Portage City, to St. Croix River or Lake, estimated to be about one million of acres; and also conveying all such interest as said railroad company has acquired or may hereafter acquire in said road from Madison to St. Croix River or Lake, and in the road from Portage City to La Crosse, with all the equipments and other things pertaining to said roads. Reference to which trust deed, bearing date the day of December, 1856, and reciting the said acts of Congress and the legislature, is hereby had and made for a more full description of said lands, roads, and other property, and the interest thereby conveyed to said trustees.

"In witness whereof, said railroad company has hereto affixed its corporate seal, with the names of its president and secretary, the first day of February, in the year of our Lord, 1857.

[L. S.]

"_____ _____, *President.*
"_____ _____, *Secretary.*

"Registered and countersigned by the trustees, this day of , 185 .

"_____ _____, *Trustees.*"

And two thousand of which bonds will be in the like form, but for the sum of five hundred dollars each.

And whereas said railroad company has determined to secure the payments of such bonds as may be issued as aforesaid, in the manner herein provided:

Now, therefore, this deed witnesseth, that the said railroad company, in

consideration of the premises, and of the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said parties of the second part all and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now
234*c* constitute or may hereafter constitute or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made or to be built and made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be procured for or used in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said roads.

And furthermore, and upon the consideration aforesaid, the said railroad company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said parties of the second part, all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin, hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix River or Lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed, or intended to be conveyed. And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature, so far as the same are applicable to the
234*d* construction of said road from Madison to St. Croix River or Lake, had already been designated and conveyed to said railroad company.

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, to the said parties of the second part, and the survivors and survivor, successors and successor of them, and their and his heirs and assigns, forever, as joint tenants, and not as tenants in common. In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to possess, hold, and enjoy said roads from Madison to St. Croix River or Lake, and from Portage City to La Crosse, with the equipments and all other things appertaining to said roads, and use the same, and take

and receive the income and profits thereof, in the same manner as though this deed had not been made.

Second. When said road from Madison to St. Croix River or Lake shall be surveyed and located, and the particular lands granted as aforesaid, to aid in the construction thereof, shall be ascertained, said railroad company will make schedules of the several sections and parcels of said lands, and affix thereto the minimum prices at which the same are to be sold, which prices shall in the aggregate for all of said lands amount to the sum of ten million of dollars at the least, and will furnish such schedules, duly certified by said railroad company, to said parties of the second part, together with an affidavit of the president and secretary of said railroad company, that, to the best of their knowledge, information, and belief, the minimum prices have been fairly fixed, having reference to the relative values of the different sections and parcels of land; and whenever said railroad company shall certify, in writing, to said trustees that it has contracted for the sale of any section or parcel of said lands at a sum not less than the minimum price affixed to the same, and ten per centum at the least of the consideration money shall be paid to said trustees, and a bond and mortgage in the proper form from the purchaser to the trustees, securing the payment of the residue of the consideration money, with the interest thereon, as
234*e* hereinafter mentioned, shall be delivered to said trustees, the mortgage having been first duly acknowledged and recorded, the said trustees will thereupon make, execute, and acknowledge a deed, conveying to such purchaser, his heirs and assigns, all the right, title, interest, and estate of the said trustees of, in, and to the section or parcel of land so sold, with a covenant that they have not done any act, matter, or thing to defeat or prejudice their title to the lands so conveyed. The principal sum secured by the bond and mortgage of the purchaser must be made payable on or before the first day of February, one thousand eight hundred and seventy-five, and the interest thereon must be at the rate of seven per centum per annum, and be payable annually. The deed of the trustees to the purchaser will bear even date with the bond and mortgage, and will specify the true amount of consideration money, and the manner in which the same has been paid or secured.

Sales may be made in like manner of any section or parcel of said lands, at a less sum than the minimum price affixed to the same in such schedules, provided the president or secretary of said railroad company shall make and furnish to said trustees an affidavit that the price agreed on is, in his opinion, the full market value of the land so sold; and provided, also, that the aggregate sums on all sales then and previously made shall be equal to or above the aggregate for all the land sold as specified in said schedule.

Third. The consideration money on any such sale of land may be paid, either in whole or in part, by delivering to said trustees to be cancelled, one or more of the bonds which may have been issued by the railroad company as aforesaid, at their par value; and payments upon any such mortgage as aforesaid may be made by delivering to said trustees one or more of such bonds of the railroad company as aforesaid, at their par value; and two or more purchasers may unite and pay a part or all of the aggregate amount of consideration money on their purchases, or a part or all of the aggregate amount of their mortgages in like manner.

Fourth. All money which may be received by said trustees, under or in pursuance of this trust, after deducting therefrom their compensation for accepting and executing the trust, and all costs, counsel fees, charges, and other expenses, shall constitute a sinking fund for the redemption
234*f* and payment of the bonds so to be issued by the railroad company as aforesaid, and shall be faithfully applied to that object; and until

the moneys shall be so applied the same shall be deposited in one of the trust companies in the city of New York upon the best terms which can be procured for the same. And whenever there shall be any money so on deposit said trustees may, in their discretion, apply the same to the purchase of the bonds which may have been issued by the railroad company as aforesaid, at their market value in the city of New York, provided such market value shall not exceed the par value thereof. And whenever the sum so on deposit shall exceed twenty-five thousand dollars, the surplus beyond that sum shall be so applied by said trustees; and in case a sufficient amount of bonds to absorb said surplus cannot be obtained at par in the city of New York, such trustees shall, on the written request of said railroad company, make purchase of bonds at a premium not exceeding ten per centum if the same can be had in the New York market.

Fifth. Whenever the trustees shall receive any of the bonds above mentioned in payment for lands sold, or on mortgages, or shall purchase any bonds, as above provided, the same, with any unpaid interest warrants or coupons annexed thereto, shall be immediately cancelled, and shall thereafter only be held as vouchers by said trustees.

Sixth. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, it shall thereupon be lawful, and said trustees are hereby authorized and empowered, in their discretion, to sell, at public or private sale, for the best prices which can be obtained for the same, all or any portion of the lands mentioned in such schedule, for the purpose of obtaining the necessary funds to satisfy such default, and may appoint one or more agents or attorneys to make such sales, execute conveyances to the purchasers, and receive the purchase-money; and if the sum in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, and the same cannot be satisfied within a reasonable time by such sales of lands, or if default shall be made in the payment of the principal sum of said bonds at maturity, said trustees may thereupon, in their discretion, either in person or by their attorney or attorneys, agent or agents, appointed for that purpose, enter into and upon, and take possession of all and
234*g* singular the said road from Madison to the St. Croix River or Lake, and from Portage City to La Crosse, and all the other property, real and personal, hereinbefore conveyed, or intended to be conveyed; and may operate said road, and take and receive the income and profits thereof, and may sell all and singular the said roads, and all the other property, real and personal, hereby conveyed, or intended to be conveyed, either at public or private sale, and execute and deliver to the purchaser or purchasers deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees, and said railroad company, of, in, or to said property, and every part and parcel thereof, including the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads which may be sold as aforesaid; but before any sale of the said lands, or either of them, or the rights, liberties, privileges, or franchises aforesaid, shall be made at auction, notice of such intended sale shall be published, once in each week for twelve weeks at the least, in two newspapers published in the city of New York, and in three newspapers, at the least, published in the State of Wisconsin, one of which shall be published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given; and on the written request of the holder or holders of the major part in amount of the bonds then outstanding the trustees shall proceed to sell and convey said property in the manner herein provided.

Seventh. Said railroad company will cause this deed to be duly recorded

in all proper places, and will satisfy and discharge all taxes, charges, liens, and other burdens, which either exist or may hereafter be imposed or arise on the whole or any part of the property hereby conveyed or intended to be conveyed; and said trustees assume no duty or responsibility on those subjects, or in relation to any other matter, except as is herein provided.

Eighth. Said trustees may appoint all such attorneys, counsellors, clerks, and other agents, as they may deem proper, in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their selection; and further, neither of the trustees shall
234*h* be answerable for the acts, omissions, or defaults of his associates or associate, nor shall either of the trustees be responsible for anything short of gross negligence or wilful defaults in the discharge of his duties.

Ninth. This trust extends to such bonds, and such only, as shall be registered and countersigned by said trustees; and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the trustees will reconvey to said railroad company all their rights, title, and interest of, in, and to all of said trust property, which may not have been previously disposed of in pursuance of the trust.

Tenth. All the powers and duties of the trustees may be executed and discharged by any two of them; and in case of the death, incapacity to serve, or resignation of any trustee, all the estate and interest hereby created shall vest in the other trustees or trustee, as fully as if they or he only had been named in and had executed the deed.

The supreme court in the first judicial district of the State of New York may remove either of the trustees, on the application of his associates, or of the railroad company, reasonable notice being first given to such trustees. Any trustee may resign his trust, and thenceforward be discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company and the other trustees, shall be approved by said supreme court. If at any time there shall be only one trustee capable of acting, said supreme court, on reasonable notice to such trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all rights, titles, interest, and authority under the trust, and subject to all duties and responsibilities in relation to the same, as fully as though he had been originally named as a trustee, and had executed this deed.

Eleventh. Said railroad company will, from time to time, pay all such costs, charges, and expenses as the trustees may sustain or be put to in the execution of the trust, and keep them fully indemnified in the premises.
234*i* Said trustees hereby accept and covenant, and agree to and with said railroad company, faithfully to execute said trust; and said railroad company hereby covenants and agrees to and with said trustees, the survivors and survivor, successors and successor of them, that said railroad company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustees, or to the persons who shall then be trustees, all such further conveyances and assurances, and will do all such further acts as may be either necessary or proper for more effectually vesting in said trustees all such rights, titles, interest, or estates, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed.

In witness whereof, said railroad company has hereto affixed its corporate [L. S.] seal, and caused the same to be subscribed by its president and secretary; and the trustees have subscribed their names and affixed their seals the day and year first above written.

BYRON KILBOURN, *President.*
EDWIN H. GOODRICH,
Secretary of the Railroad Company.
GREENE C. BRONSON,
JAMES T. SOUTTER,
SHEPHERD KNAPP,
Trustees.

Witnesses as to Byron Kilbourn, president, and Edwin H. Goodrich, secretary:
E. MARINER.
S. H. ALDEN.

Witnesses as to Messrs. Soutter and Knapp:
J. S. ATWOOD.
JOHN BISSELL.

Witnesses for Greene C. Bronson, as to the execution of the foregoing instrument by him:
EDWARD WADE.
S. H. ALDEN.

235 *Copy of mortgage on iron and rolling stock.*

This indenture, made and entered into this fourth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, parties of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, all of the city and State of New York, parties of the second part.

Whereas the said parties of the first part did on the thirty-first day of December, in the year one thousand eight hundred and fifty-six, duly execute and deliver to the said parties of the second part as trustees a deed of trust bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain monies which the said party of the first part had determined to borrow, stipulated and provided for the issue of the bonds of the said La Crosse and Milwaukee Railroad Company for ten millions of dollars, of the date, tenor, and description in the said deed of trust particularly set forth, and payable, principal and interest, as therein provided. And whereas the said railroad company, in and by the said deed of trust, granted, bargained, sold, conveyed, and confirmed unto the said parties of the second part all and singular the several tracts of land which then was or thereafter might be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings of the said company, and other lands, buildings, and estate and property, real and personal and mixed, therein specially and particularly
236 described, which conveyance was in and by the said deed of trust declared to be and was made to the said parties of the second part, and the survivors and survivor, successors and successor of them and their and his heirs and assigns in trust and upon the trusts, terms, and conditions therein particularly expressed. And whereas the said parties of the first part did, in and by the said deed of trust, covenant and agree to and with the said trustees, the said parties of the second part, that the said railroad company would from time to time during the continuance of the trust make,

execute, cause to be duly recorded and delivered to the said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might be either necessary or proper for more effectually vesting in the said trustees all such rights, title, interest, or estates, both legal and equitable as said railroad company then had or might thereafter acquire of, in, and to all and every part of the property thereby conveyed or intended to be conveyed. And whereas the said railroad company had at the time of the execution of the said deed of trust, or have since acquired certain property which was conveyed or intended to be conveyed, thereby and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title, right, interest, and estate, legal or equitable, which the said company then had or
237 have since acquired therein:

Now, therefore, know all men by these presents that the said parties of the first, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises and of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the said parties of the second part all and singular about eleven thousand tons of iron rails, being all the iron rails purchased for and belonging to the said company, and lying at Milwaukee and elsewhere along the line of the road of the said company, or wherever the same or any portion thereof may be, and not actually laid down in the tract thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said company wherever the same may be.

To have and to hold all and singular the property hereby conveyed or intended to be conveyed to the said parties of the second part, and the survivors or survivor of them, their successors and successor, and their and his heirs and assigns, upon the like trusts, terms, and conditions as are in the said deed of trust contained, and all the powers and authority granted to the said parties of the second part in and by the said deed of trust in re-
238 lation to the property conveyed thereby, and in relation to the sale, conveyance, and disposal thereof, and in relation to the disposition and application of the proceeds of such property in case of sale, are hereby conferred upon, granted to, and vested in the said parties of the second part, in relation to the property hereby conveyed as fully and effectually as if the property hereby conveyed had constituted a part of the roadway of the said company described in the said deed of trust at the date thereof, and the said parties of the second part are hereby charged with all the duties in relation to the property hereby conveyed, and the sale and disposition thereof and of the proceeds thereof in case of sale thereof, with which they are charged in relation to the property conveyed or intended to be conveyed by the said deed of trust. And the said parties of the second part may, and they are hereby authorized and required to treat the property hereby conveyed in the same manner, and to hold the same upon the same terms, trusts, and conditions, and for the same purposes as the property mentioned in the said deed of trust, and not otherwise, and may take possession thereof, and sell and dispose of the same in the same manner, at the same time and upon the same conditions, as they may take possession of and sell and dispose of the property in said deed of trust mentioned, and as a part thereof, and not otherwise. And it is hereby declared to be the object and intention of these presents, and of the parties hereto, to subject
239 the property hereby conveyed, or intended to be conveyed, and every part thereof, to the operation of the said deed of trust, and each and

every stipulation and covenant therein contained as fully and effectually to all intents and purposes as if the said property hereby conveyed or intended to be conveyed had at the time of the execution of the said deed of trust constituted a part of the property thereby conveyed, and had then been embraced in and conveyed thereby.

In witness whereof, said railroad company has hereto affixed its corporate [L. S.] seal, and caused the same to be subscribed by its president and secretary, the day and year first above written.

BYRON KILBOURN, *President.*
J. HADLEY,
Secretary of the Railroad Company.

In presence of—
H. N. PEABODY.
E. P. WHALING.

STATE OF WISCONSIN, *Milwaukee County, ss:*

On the fourth day of September, in the year one thousand eight hundred and fifty-seven, before me came Byron Kilbourn, the president of the La Crosse and Milwaukee Railroad Company, with whom I am personally acquainted, and who, being by me duly sworn, says that he resides in the city of Milwaukee, in said county, and that he is president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to
240 the foregoing indenture is the common and corporate seal of the said railroad company, and was affixed to the said indenture by order of the board of directors of said company for the uses and purposes therein expressed, and that he, by like order, did subscribe his name thereto as president of said company, and that Jackson Hadley as secretary of said company subscribed his name thereto by like order and authority.

H. L. PALMER,
Notary Public, Milwaukee County.

OFFICE OF SECRETARY OF STATE,
Madison, Sept. 5th, 1857.

Rec'd for record, and recorded in Book of R. R. Mortgages, on pages 242, 243, 244, at 8 o'clock a. m.

D. W. JONES, *Secretary of State.*

241 *Chamberlain—Release of judgment.*

An indenture made the twenty-eighth day of January, one thousand eight hundred and fifty-eight, between Selah Chamberlain, of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees, under a certain mortgage or deed of trust to them made by the La Crosse and Milwaukee Railroad Company, bearing date December 31, 1856, of the second part.

Whereas by the above-mentioned mortgage or deed of trust, and an instrument in modification thereof, bearing even date herewith, provision has been made for the issue of bonds of such company known as land grant bonds, to the amount in all, including those already issued, of four millions of dollars, secured under said deed of trust or mortgage, and such instrument in modification thereof by a lien upon the road of said company constructed and to be constructed from Portage City to La Crosse, and upon certain lands appurtenant thereto, or acquired or to be acquired by reason of the construction thereof, and upon certain other property of said company acquired and to be acquired, as by reference to said mortgage or deed of trust, and such instrument in modification thereof, will more fully appear,

and whereas the said Selah Chamberlain is now the holder of a judgment against the said La Crosse and Milwaukee Railroad Company, by him heretofore recovered, and it is desired to avoid any question which might be raised in respect of the interference of the lien of such judgment with the lien created for the security of said four millions of bonds issued and to be issued, and to give such bonds undisputed priority of lien upon the
242 property covered by said mortgage or deed of trust as so modified, over the lien of said judgment, with the view to the better negotiation of such bonds:

Now, this indenture witnesseth, that the said Selah Chamberlain, in consideration of the premises, and of one dollar to him paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and for other good and valuable considerations him thereunto moving, hath covenanted, granted, and agreed, and doth hereby covenant, grant, and agree, to and with the said parties of the second part, as trustees as aforesaid, for and in behalf of all such persons and corporations as now are or hereafter shall be or become holders of any of the above mentioned land grant bonds now issued or hereafter to be issued within the said limit of four millons of dollars, and to and with the successors of said trustees, that the lien and security created by or under the said mortgage or deed of trust bearing date December 31, 1856, and the said instrument in modification thereof, for or in respect of the said four millions of dollars of land grant bonds issued and to be issued thereunder, has and shall have priority and precedence over any lien which the said party of the first part has, or but for this instrument could have or claim or be entitled unto under or by virtue of any judgment by him heretofore recovered against the said the La Crosse and Milwaukee Railroad Company upon the property now owned by said company, or hereafter to be acquired by them, which is or shall be subject to
243 the lien of said mortgage or deed of trust as modified by the said instrument of even date herewith.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

SELAH CHAMBERLAIN. [SEAL.]

In presence of—
CHAS. F. SOUTHMAYD.
C. L. PERKINS.

STATE OF NEW YORK, *city and county of New York, ss:*

On this 28th day of April, A. D. 1860, before me came Charles F. Southmayd, subscribing witness to the foregoing instrument, to me known, who, being by me duly sworn, did depose and say that he resides in the city of New York, that he is well acquainted with Selah Chamberlain, and knows him to be the individual described in and who executed the foregoing instrument; that said Selah Chamberlain executed the same in his presence, and that thereupon he subscribed his name as witness thereto.

EDWIN F. COREY, *Commissioner of Deeds.*

UNITED STATES OF AMERICA,
State of New York, city and county of New York, ss:

Be it remembered, that on this twenty-eighth day of April, in the year one thousand eight hundred and sixty, before me, the undersigned, Edwin F. Cary, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take acknowledgments of deeds, &c., to be used or re-
244 corded therein, personally appeared Charles F. Southmayd, whose name is subscribed to the annexed instrument as an attesting wit-

ness thereto, and upon oath on the Holy Evangelists by me duly administered to him, deposeth and saith that he saw the annexed named Selah Chamberlain, whose name is subscribed thereto, sign, seal, and deliver the same to the said Greene C. Bronson, James T. Soutter, and Sheppard Knapp, grantees, and that he, this deponent, subscribed his name as a witness thereto; and I do certify that I know the said Charles F. Southmayd to be the individual who subscribed his name to said instrument as a witness thereto.

In witness whereof, I have hereunto set my hand and affixed my [L. s.] official seal the year aforesaid.

EDWIN F. COREY,
Commissioner for the State of Wisconsin, office Merchants' Exchange, New York.

245 *Deposition of Byron Kilbourn.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTER, SHEPHERD Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.
} In chancery.

Deposition taken by consent on behalf of the complainants in the above-entitled cause, before Winfield Smith, one of the commissioners and masters of this court, at his office in the city of Milwaukee, Monday, 14 May, 1860.

Present: Mr. Cary for the complainants; Mr. Emmons for the defendant, Selah Chamberlain.

Byron Kilbourn, being duly sworn, says: I think I was elected president of the La Crosse and Milwaukee Railroad Company in February, 1856, and I resigned about the first of November, 1857. I was chief engineer of the company immediately after its organization, and continued in that capacity until its consolidation with the Fond-du-Lac Railroad Company, I think in the spring of 1854. From that time until I was elected president I
246 was a director in the company. I don't know that I can answer definitely when the road was located from Portage City to La Crosse; surveys were made at different times; two parts of the road were located and then changed. I don't think the general route from Portage to La Crosse was fixed until May, 1857. There was a survey of the line from Portage to Newport in 1855; in building the road subsequently we followed a new line entirely. I think the line was finally established from Portage City to Kilbourn City in the fall of 1856. The first contract for the grading at Kilbourn City was in writing, and was with Mr. John Anderson; it was made, I think, in October, 1856. This contract covered a portion of the line between Lone Rock and Kilbourn City; they did some work there, not to any great extent, however. I don't know when the work was done. John B. Vliet was reported to be interested in it. The road was located at La Crosse in the spring of 1857. I think the La Crosse Company fixed upon the commencement of the western division at the point where the road from Madison would intersect it, south and east of the canal bridge. The first negotiation I made for the sale of the land grant bonds of the La Crosse Company was in November or December, 1856; I made no actual sale then. The negotiation was with Vose, Livingston & Co. The amount was over $700,000. Those bonds were negotiated for the iron laid on the west-
247 ern division of the road. I made the bargain at that time, the bonds and the iron to be subsequently delivered. The contract was partially

but not entirely carried out. I don't think that I personally made any other negotiations for the sale of bonds; I know of other sales only by report of officers and agents. The depot at Portage City must have been located in the spring of 1856; I can't tell exactly when. The grading was done in the summer and fall of 1856, and in the spring of 1857. The distance from the canal bridge to the depot is about a mile, the depot being west of the bridge.

Cross-examination by Mr. Emmons.

The Chamberlain and Alden contract was on the eastern division to Portage City and extended up to the depot.

Question. Do you know the date of the deed of trust or mortgage called the land grant mortgage?

Answer. I believe it was the 31st of December, 1856.

Question. Was any portion of the line of road embraced within that mortgage or deed of trust constructed, or in process of construction, on that day?

Answer. This mortgage embraces a line described thus: The roadway of said railroad company from Madison, by way of Portage City, to the
248 St. Croix River or Lake, between township 25 and 31 and from Portage City to La Crosse. That line of road was not fixed or established at that time, nor until some time after that time, to wit, the spring or summer of 1857. Consequently no work was done on that line at that time.

(The plaintiffs' counsel objects to this answer as a conclusion of law.)

The work done on the eastern division up to Portage City was done under a contract which was let prior to the 15th day of October, 1856, and before we had any land grant.

Re-examination by Mr. Cary.

We had no definite point for the dividing line between the two divisions, the eastern and western divisions of the old La Crosse road. The eastern division, before the land grant, extended to the depot. When we got the land grant we had to occupy a portion of the old line of the eastern division. There was never any definite action by the company on the question of the point of union of these divisions. The line of the road from Madison unites with the old La Crosse road about a mile this side of the depot, not far from the land bridge.

In reviewing the foregoing testimony as written, my answer in regard to the point of commencement of the western division does not correctly state my meaning upon that subject. I do not mean to be understood as saying that the company ever defined or fixed upon a point near the canal
249 bridge as that at which the eastern division would begin, but as the point where the land grant line from Madison would intersect the original line of the eastern division as established previous to the acquisition of the land grant by the company; from which point to the depot at Portage City the new line would be merged in the old one upon which the road had already been constructed. Now as I understand the purport of the several inquiries, I am requested to state with definitiveness that which the company never definitely fixed, to my knowledge. This I do not feel competent to do; but according to my own knowledge as to the objects and intentions of the company and the current history of the matters connected with these several surveys and locations, the conclusion of my own mind is that the termination and commencement of the several divisions is at the depot in Portage City.

Cross-examination by Mr. Emmons.

Question. When was the line first surveyed from Madison to Portage City?

Answer. That was in January and February, 1857, I think, and the first line was completed in the summer of 1857. This was done under the authority conferred by the land grant act (so called) of October, 1856. The line of road from Milwaukee to Portage City was completed and the cars were running on it in January, 1857—working trains. It was open for general business
250 of the road in March, 1857. That was a portion of the old La Crosse road prior to the survey or adoption of the land grant line.

Re-examined by Mr. Cary.

Question. Does not the road as now built from Portage City to La Crosse, occupying the general route proposed for the old La Crosse road prior to the land grant?

Answer. The company intended to build the road on the best route they could find from Portage City to La Crosse; it required a great amount of surveying to ascertain which was the best route. We first contemplated the Baraboo Valley. The general route was the same which we had contemplated taking prior to getting the land grant. It was not the route, however, on which we intended to construct the land grand road after we had obtained the land grant, but we were restricted to it by the decisions of the Land Office department at Washington.

BYRON KILBOURN.

DISTRICT OF WISCONSIN, *ss:*

I certify that the foregoing deposition was taken by consent of parties, at the date and in presence of the counsel named in the caption thereto, and that the said witness was first by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause, and that
251 his answer so taken on oath, was by me reduced to writing and then carefully read over to him, and by him subscribed in my presence.

Witness my hand this fourth day of February, A. D. 1861.

WINFIELD SMITH, *Commissioner.*

253 *Deposition of Ch. H. Roberts and P. Dow.*

The district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, SHEPERD KNAPP, AND JAMES T. Soutter, trustees, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Selah Chamberlain, and others.
} In equity.

Depositions of Charles H. Roberts and Prentis Dow, taken by consent, May 15, 1860, before J. P. C. Cottrill, U. S. commissioner, Mr. C. N. Potter appearing for the complainants, and Mr. N. J Emmons for the defendant, Selah Chamberlain. No appearance for other defendants.

Charles H. Roberts, being duly sworn, deposes and says: I represent the holders of some of the bonds of the La Crosse and Milwaukee Railroad Company, secured by what is known as the first land grant mortgage. I have investigated the portion of the railroad of said company lying west of Portage City covered by said mortgage, so as to enable me to judge of the business, value, and relations of the same. In my judgment this line of

road from Portage City to La Crosse can be run and worked at a profit. I believe it has been so run since it was built. I would be willing to be one of the parties to take a lease of said line for ten years or more, at a
254 rate of one hundred thousand dollars per year, besides all taxes, charge, &c. By said line I mean the portion of road lying between Portage City and La Crosse.

CHARLES H. ROBERTS.

Subscribed and sworn to this 16th day of May, A. D. 1860, before me.
J. P. C. COTTRILL, *U. S. Commissioner.*

Being cross-examined by Mr. Emmons, the said Charles H. Roberts further says:

Question. You say in your direct examination that you have investigated the portion of the railroad of said company lying west of Portage City, so as to enable you to judge of the business, value, and relations of the same. What has been the opportunities and extent of your investigations?

From being acquainted with the country which it naturally drains? The business of the Upper Mississippi is very large during the summer season, and that is the natural outlet for it. I judge from a comparison with other roads that have a similar business to do.

I reside at Poughkeepsie, in the State of New York. I have never resided in Wisconsin. I do not know what the rate of taxation upon railroads in Wisconsin is.

I observe you say in your direct examination, as follows: "I would
255 be willing to be one of the parties to take a lease of said line ten years or more at a rate of $100,000 per year, besides all taxes, charges, &c." If you do not know what the rate of taxation is, what would inspire you to pay $100,000 per annum rent?

From the fact that I don't think that there is a main trunk line of railroad in the United States but what would be a profitable road at that price. I regard this as a main trunk line.

What does the "&c." mean?

(Question waived.)

I know nothing of the earnings of the road except, as I compare it with other roads, judge what it ought to do. I have paid attention to the reports of this road.

CHARLES H. ROBERTS.

Subscribed and sworn to this 15th day of May, A. D. 1860.
J. P. C. COTTRILL, *U. S Commissioner.*

Prentiss Dow, being duly sworn, deposes and says: I was in the employment of the La Crosse and Milwaukee Railroad Company from July till October, A. D. 1857, in the capacity of transfer agent in the city of New York. I had control of what was known as the land grant bonds, and other securities of the company at that time. There had been issued up to the
256 first week in October, 1857, of the land grant bonds, one million nine hundred and ninety-one thousand dollars; and five hundred and nine thousand dollars in said bonds were delivered by me into the hands of Stephen Clark, then president of the company, in November, 1857, and were paid out during January and February, A. D. 1858. The balance of the four millions of said bonds were issued subsequent to January 28th, 1858. The bonds I speak of were those issued under the deed of trust of December 31st, 1856, to Bronson, Soutter, and Knapp, as trustees. The last interest on said bonds was paid February 1st, 1858, which was the interest maturing on that day.

There have generally been some two passenger trains and one freight train each way over this road, except during the winters, when there have been one passenger and one freight train each per day, aside from extra freight trains which have been used as occasion required.

I know nothing about the traffic of the road in its details.

PRENTISS DOW.

Subscribed and sworn to this 16th day of May, 1860, before me.

J. P. C. COTTRILL, *U. S. Commissioner.*

DEFENDANTS' TESTIMONY.

257 District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, SHEPHERD KNAPP, AND JAMES T. Soutter *vs.* THE LA CROSSE RAILROAD COMPANY, S. CHAMBERLAIN, *et al.* } In equity.

Dwight W. Keyes, being duly sworn, deposes and says that for four years past he has been the cashier of S Chamberlain, employed in the receipt and disbursements of moneys in conducting and managing the La Crosse and Milwaukee Railroad Co. as contractor and mortgagee. That on the 29th day of July, 1858, said Chamberlain leased from Thomas Spencer and Benjamin W. Reynolds, a strip of land at the city of La Crosse on which the station and depot of said company are situated. That between the date of said lease and the month of December, 1858, the said Chamberlain erected depot buildings and made other improvements for that purpose of the value and cost of $12,190 95, which with interest at 12 per cent. from December 1st, 1858, to the 1st day of February, 1861, amounts to the sum of $15,360 58. That this deponent disbursed said principal sums to W. R Sill, who in person had charge of said erections and improvements, for which deponent received from said Sill receipts and vouchers annexed.

258 DWIGHT W. KEYES.

Sworn to and subscribed before me this 2nd day of February, 1861.

ALFRED L. CARY, *Notary Public, Mil. Co., Wis.*

It is stipulated that the annexed testimony and exhibits attached may be offered and read in evidence on the hearing, the same as if taken on proper notice before a commissioner of this court, and with like force and effect, and subject only to the same objections as might be urged in that case.

Dated February 2nd, 1861.

CARY & PRATT, *Solicitors for Complainants.*

259 S. Chamberlain to Sill, Loomis & Root, Dr.

	For lumber, timber, &c.	
	For eating-house at La Crosse	
Oct. 30.	37,866 feet lumber, at $13	$492 25
	562 b'ds and flooring	7 30
	1 door	3 00
Nov. 6.	1,800 feet lumber, $13	23 40
19.	7 doors, at $3 00	27 00
	1,827 feet plank, &c., $13 00	23 75
		$570 70

Rec'd payment. W. R. SILL.

S. Chamberlain to W. R. Sill, Dr.

Disbursements on eating-house, as per voucher:

No. 1	To cash p'd	A. Hobart, carpenters' work	$472	31
2	Do.	N. Rosevelt, labor	25	00
3	Do.	D. Wright, com.	13	25
4	Do.	J. S. Bantam & Co., pile-driving	85	00
5	Do.	Wm. Downs, plastering	153	30
6	Do.	Wm. Downs, lathing depot and engine-house	23	25
7	Do.	J. B. Newton, lime	45	90
8	Do.	T. Dowling, com. labor	16	50
9	Do.	F. Hunt	57	00
10	Do.	Bame & Wells, glass	37	58
11	Do.	" " "	4	40
12	Do.	T. Childs & Co., stores	25	81
260 13	Do.	Garrett & Co., plastering hair	7	50
14	Do.	Gunkle & Bloomer, brick	4	80
15	Do.	Cooper, drayage	3	35
16	Do.	J. M. Ealy, carpenter	30	00
17	Do.	Sholes, team work	12	30
18	Do.	E Chamberlain & Co., lumber and planing	26	50
19	Do.	W. R. Sill, sundry items	32	45
20	Do.	Lloyd & Supplee	120	90
21	Do.	C. S. Coleman, shingles	10	00
22	Do.	R. D. Jennings, "	38	50
23	Do.	Sill, Loomis & Root, lath, 8 M	16	00
24	Do.	Valentine, lath, 10 M	18	00
25	Do.	W. R Sill, drayage, &c.	5	00
26	Do.	D. Law, ice bill	7	00
			1,291	63
	Do.	Daniel L. Wall, plumb and ties	35	50
			1,327	13

Rec'd payment. W. R. SILL.

261 S. Chamberlain to A. Hobart, Dr.

Dec. 13, 1858. For work on eating-house as follows:

To 262½ day's work of men at $1 50	$393	81
To self 13 days, at $2½ and use of tools and hands	78	50
	$472	31

Received payment by hands of W. R. Sill. A. HOBART.

S. Chamberlain to N. Rosevelt, Dr.

Nov. 1858. For 25 days' work on eating-house $25 00

Received payment by hands W. R. Sill. M. ROSEVELT.

S. Chamberlain to Darius Wright, Dr.

Dec. 1, 1858. For work running lumber to and handling lumber about eating house, 13¼ days, at $1 00 ..... 13 25

Received payment by hands W. R. Sill.

his
DARIUS ⋈ WRIGHT.
mark.

S. Chamberlain to J. S. Bantam & Co., Dr.

Nov. 1, 1858.	For 32 days' work piling under eating-house, 10*s*....	$40 00
	For p'r horses, machine, sup. 5 days, a $9.....	45 00
		$85 00

Rec'd payment. J. S. BANTAM & CO.

262 S. Chamberlain to Wm. Downs, Dr.

Dec. 1, 1858.	For plastering work on eating-house:	
	P'd Mr. Soper, plasterer, 9 days, a 2¼.....	$20 75
	Gallin, " 7 " "	15 75
	Rowlin, tender, 11½ " a 10*s*.....	14 05
	Shenbeck, 9 " "	11 25
	Alinson, 1½	2 00
	Selleck, 7½	7 50
	Paid for lathing, 2½ pr. y'd.....	32 00
	Self 14 days, a 3¼	45 50
	Extra work in b'smith shops and depot.....	5 00
		$163 30

Rec'd payment by hands W. R. Sill.

WILLIAM DOWNS.

S. Chamberlain to Wm. Downs, Dr.

Oct. 15, 1858.	For work done by hands lathing depot and engine-house, and paid by me:	
	Peter Sartain, 4 days.....	$4 25
	Welsher, 7 "	9 00
	B. Allison, 7	7 00
	Wm. Rowlinson, 2½	3 00
		$23 25

Rec'd payment by hands W. R. Sill.

WILLIAM DOWNS.

263 La Crosse, *Oct.* 8, 1858.

W. R. Sill to J. B. Newton, Dr.

	To 6 bbl. lime.....	$4 50
Oct. 16.	" 4 " "	3 20
	" 40 " "	40 00
		$47 70

La Crosse, *Nov.* 5, 1858.

W. R. Sill:

By balance on account.....	1 80	
By cash.....	2 00	
		3 80
Balance due		$43 90

Rec'd payment. J. B. NEWTON.

S. Chamberlain to Thos. Dowling, Dr.

Dec. 10, 1858. For 16½ days' work on eating-house up to date, at 1 00 ..... $16 50

Rec'd payment by hands W. R. Sill.

his
THOS. ⋈ DOWLING.
mark

S. Chamberlain to Francis Huirt, Dr.

Dec. 15, 1858. For 28 days work one ating-house, a $1 50 ..... $42 00
For 10 days previous to Nov. 10th 15 00

$37 00

Rec'd payment by hands W. R. Sill.

FRANCIS HUIRT.

264 LA CROSSE, 185 .

La Crosse and Mil. railroad, bought of Bame & Wells, wholesale and retail druggists, dealers in foreign and domestic drugs, medicines, chemicals, paints, dyes, salts, acids, oils, and varnishes, brushes, patent medicines, instruments, perfumery, and other articles for druggists and apothecaries, No. 1 Front street—

Oct. 1, 1858.	2 doz. 10 x 15 glass, Rosevelt	$2 00
8,	2 " 9 x 12 "	1 50
8,	4 lbs. putty	28
16,	6 l'g'ts glass, 12 x 18, Donnell	90
16,	1 " " 10 x 10	13
16,	2 lbs. putty	15
29,	Brush, 20 cts.; litharge, 5 cts.; Rosevelt	25
29,	Linseed oil, 55 cts.; 25 lbs. white lead, 1 75	2 30
Nov. 1,	43½ lbs. putty, 7 cts	3 05
	3 box 10 x 14 glass, eating-house, 3 50	10 50
5,	½ gall. lin. oil, 55 cts.; Japan, 2s	80
	1 6-0 paint brush, e. house	1
	1,000 M brick	7
	27 l'g'ts glass, 10 x 10, 6 doz	1 68
10,	5 galls. linseed oil, e. h	5 50
	25 lbs. white lead, e. h	1 75
	4 l'g'ts 10 x 14 glass, e. h	40
15,	5½ lbs. putty, 7 cts	39
		$39 58
	Less item Oct. 1 rendered in previous bill	2 00
		$37 58

Rec'd payment, Nov. 15, '58. BAME & WELLS.

265 LA CROSSE, *Dec.* , 1858.

La Crosse and Milwaukee railroad, bought of Bame & Wells, wholesale and retail druggists, dealers in foreign and domestic drugs, medicines, chemicals, paints, dyes, salts, acids, oils, varnishes, brushes, patent medicines, instruments, perfumery, and other articles for druggists and apothecaries, No. 1 Front street—

Dec. 1.	25 lbs. white lead, 14c.; 1 gall. oil, $1 10	2 85
13.	¼ lb. litharge, 5c.; difference in glass, 30	35
22.	1 gall. fluid, 80c.; 2 l. chimneys, 40c	1 20
		$4 40

Rec'd payment by hand W. R. Sill, January 3, '59.

BAME & WELLS.

La Crosse, *Nov. 26th*, 1838.

La Crosse and Milwaukee Railroad Co., per W. R. Sill, to Thomas Child & Co. Dr.

For	2 No. 4 box stoves, $10	20 00
	46½ lbs. pipe, 1s	5 81
		$25 81

Rec'd pay't. THOS. CHILD & CO.

S. Chamberlain to Garretts & Walack, Dr.

Oct. 11, 1858.	To 5 bushels hair, 4s	$2 50
Nov. 11, "	10 " "	5 00
		$7 50

Rec'd payment, Jan'y 5, 1859. GARRATT & WALOCK.

266 W. R. Sill, bought of Glunkle & Bloomer—

	Eight hundred brick, at 6 00	$4 80

Rec'd payment, La Crosse, Dec. 31st, '58.

GLUNKLE & BLOOMER.
Pr. A. WEHANREN & CO.

Aug. 16. Mr. Sill to J. M. Cooper, Dr.

	To hauling 7 loads for the depot	$1 75
Oct. 26. " "	iron from for depot	20
	windows from Lord & Suplias	20
27. " "	18 thousand shingles from Coleman's for the depot	1 00
		3 15
Sept. 29.	Overlooked 1 load	20
		$3 35

Rec'd payment. J. M. COOPER.

S. Chamberlain to John McCaley, Dr.

Dec. 15, 1858.	For work on eating-house, 20 days' from Nov. 20th to date, at $1,50 per day	$30 00

Rec'd payment by hands W. R. Sill.

JOHN McCALEY.

	Oct. 11.	2 loads plank	80
267	16.	1 days' work hauling plank and boards	3 50
	18.	1 " " to town	3 50
	19.	1 " timber and to town	3 50
			11 30
		To be on the above	1 00
			$12 30

Rec'd payment. H. S. SEELEY.

Mr. Wm. R. Sill, for S. Chamberlain, to E. Chamberlain & Co., Dr.

Oct., 1858.	To 4,289 feet, planed and mach'd	19 40
Nov.	" 300 " flooring	7 20
		$26 50

Rec'd payment by hands W. R. Sill.

E. CHAMBERLAIN & CO.

S. Chamberlain to W. R. Sill, Dr.

To bills paid on eating-house as follows :

Nov. 4, 1858.	P'd Wm. Branch for team work at sundry times	16 95
	P'd John Davis for carpenter work	8 50
	P'd J. W. for 3 days' com. labor	3 00
	P'd Mr. ——, for team work	4 00
		32 45
	Also, for drayage	5 00
		$37 45

Rec'd payment. W. R. SILL.

268 Mr. Wm. R. Sill in ac't with Lloyd & Supple, for bill of goods for eating-house, Dr.

Oct.	18.	To 2 kegs nails, 20d., 4 25	8 50
	"	" 2 " " 10d., 4 25	8 59
	"	" 1 " " 8d., (eating-house)	4 25
	"	" 1 " " 4d., "	5 00
	"	" 125½ lbs. round iron, 5c	6 27
	24.	4, 3 tumb. locks, ½	3 00
	"	" 3 pr. butts, 2½ x 2½, 10c	50
	"	" 3 doz. screws, 5c	15
	26.	" 14 windows, 168 lights, sash 10 x 14, 6c. (e. house)	10 08
Nov.	1.	" 1 paper glazier's paints "	15
"	"	" 12 lights sash, 10 x 14, 6 "	72
"	5.	" 1 keg nails, 8d "	4 25
"	5.	" 1 " " 20d "	4 25
"	6.	" 1 " " 8d "	4 25
"	8.	" 24 lights sash made to order, 6c "	1 44
"	"	" ½ quire s. paper "	10
"	11.	" 12 lights sash, 6c "	72
"	12.	" 1 keg nails "	4 25
"	15.	" 50 lbs. nails, lathing, 6¼	3 12

Nov. 15.	To 1 doz. pr. butts		1 00
" " "	1 gross screws		50
" 20. "	20 lb. nails lathing, 6½		1 25
" " "	12 lights sash, 10 x 12, 5		60
" " "	2 gross screws, ¾ in., 75		1 50
Nov. 22.	To 1 rim lock and knob		1 25
269 " "	" 3 butts, 4 x 3½ in		30
" "	" 1 pk. fin. nails		15
Nov. 24.	To 16 rim locks, 50		8 00
" " "	2 " " 40		48
" " "	6 cupboard do., 25		1 50
" " "	6 knobs for c. doors, 5		30
" " "	1 doz. pr. butts, 4 in		1 00
" " "	1 grs. screws		35
" " "	2 pk. fin. nails, 15		30
	Am't carried forward	$88	30
	Forward	88	30
24.	16 doors, 4 pannel, all sizes, 1 80c., (e. house)	28	80
26.	2 brass c. ketches, 20c		40
"	2 pr butts and screws, 10		20
29.	1 pr. drawer handles		40
"	½ gr. sand paper		10
Dec. 2.	1 gross screws		50
" "	2 pr. fin. nails, 15		30
" 4.	1 pr. brass butts, (e. house)		20
" "	1 cup. catch		15
" 8.	5 pr. butts, 4 in		75
" "	1 key		15
" 11.	1 pr. butts, 15; 5 lb. nails		25
		120	90

Rec'd payment, La Cross, Jan. 11th, 1859. LLOYD & SUPPLEE.

270 W. R. Sill, Dr. to C. L. Colman.

Oct. 27, 1858.	To eighteen M of shingles, 2 40	43	20
	By nine M of shingles, 2 40	21	60
	By seven to one h'lf sgns. returned from Portage City	11	60
		$10	00

Rec'd payment. C. L. COLMAN.

$38 50. FOND DU LAC, *Jan'y* 7, 1859.

On demand, pay to the order of A. G. Ruggles, esq., thirty-eight dollars and fifty cents, value received, and charge the same to account of us, per letter of 3d inst. to R. D. Jennings, esq., G. T. A.

No. —, Milwaukee, Wis. E. H. GALLOWAY & CO.

L. C. & M. R. R. Co., S. Chamberlain, mortgagee, to E. H. Galloway & Co.

To 24 sg. M shingles, including freight to Portgage City..... $38 50

Rec'd payment by draft made on you through the Bank of Northwest, Fond du Lac, Jan'y 7, 1859.

E. H. GALLOWAY & CO.

271 S Chamberlain to R. D. Jennings, Dr.

1858. To shingles used on eating-house, as pr. bill paid..... $38 50

Rec'd payment.

S. Chamberlain to Sill, Loomis & Root, Dr.

Nov. 30, 1859. To 8 M lath for eating-house..... $12 00
Lumber for sink in do. 4 00

$16 00

Rec'd payment. SILL & ROOT.

S. Chamberlain to John Valentine, Dr.

Nov. 30, 1858. To 10 M lath for eating-house, at 1 80..... $18 00

Rec'd payment. JOHN VALENTINE.
By W. R. SILL.

Rec'd of W. R. Sill ten dollars in full for ice delivered at his house and at depot during summer of 1858.

La. Jan'y 10, '59. Del. at house..... $3 00
Del. at depot..... 7 00

$10 00

Rec'd payment. DAVID LAW.

272 S. Chamberlain to W. R. Sill, Dr., for the following bill paid on ac. depot building, eating-house, water-house, turntable, blacksmith shop, and other buildings at La Crosse:

1	A. Hobart, carpenter work.....	$1,835 00
2	J. S. Bantam & Co., pile-driving.....	794 50
3	Hartley & Manifold, building eng. house.....	400 00
4	Frason & Shute, " bl'ks. shop.....	154 00
5	Gunkle & Bloomer, brick.....	187 57
6	A. W. Shepard, stonework.....	73 42
7	James Robinson, brickwork.....	123 50
8	Chas. Colman, 54 M shingles.....	129 60
9	S. T. Smith, 50 " "	125 00
10	W. B. Hascomb, 10½ " "	26 25
11	Benj. Horton 13 " "	26 00
12	Baley & Co., blacksmith work.....	90 58
13	E. K. Buttrick & Bro., planing and lime.....	100 03
14	Bame & Wells, glass, sash, &c.....	64 61
15	Webb & Rumsey, block, pulleys, &c.....	16 50
16	Seely & Sholes, team work.....	122 15
17	Josu. Jones, painting.....	107 00
18	Tenney, Oatman & Co., stoves, pipe, elbows.....	44 89
19	H. D. Greeley, blacksmith work.....	13 10
20	Lloyd & Supplee, hardware bill.....	380 78
21	N. Palmer and men, pay roll, carpenter.....	273 48
22	Jerry O. Leary and T. Maddigan, com. labor.....	41 00
23	F. Hunt, team work	14 00
	24 E. Kennedy, running logs and lumber.....	26 95
273	25 E. S. Bentley, glazing.....	8 17
	26 F. M. Rublee, nails.....	8 00
27	Pay roll for willow dock.	262 74

28	Wm. Downs, plastering	230	00
29	Cyrus Tucker, boating, &c.	10	50
30	N. Rosevelt, boatman	69	40
31	Wm. Branch, teaming	25	86
	Amount carried forward	5,784	58
	To amount bro't forward	5,784	58
32	J. B. Newton, bill lime	20	00
33	T. Maddigan, " com. labor	42	50
34	Horan "	25	50
35	Keys, carpenter	24	50
36	Newmach, "	12	75
37	G. Leach, cutting screws	20	00
38	C. W. Thompson, bill and timber	91	25
39	Hutchinson, oak plank	1	50
40	Crosby, Hanscom & Co., lath	44	40
41	N. Southard & Co., planing	40	25
42	W. Broom & Co., stoves, pipes, &c.	51	63
43	M. Goddard, carpenter	33	00
44	Thos. ———, hair and rope	5	75
45	Cal. Nichols, lumber	10	30
	46 Jno. Davis, 14½ days' work	27	75
274	47 M. G. Thurston, 8½ "	15	00
	48 W. Lonenboro, 28 bbls. lime	21	00
49	Jno. Branch, team work	3	50
	Cash expense to Milwaukee	7	30
	" " bill and drayage	23	90
	" " rope, oil-can, nails, &c.	2	80
	Norris & Co., rigging	4	05
	Cash, boat hire and labor	13	25
	" freight on timber from	37	50
	" incidentals to turntable timber	12	00
	" Gardner & Graham, 3 shovels	1	50
	" three bbls. for water-house	1	25
	" dry-goods boxes for lime	1	00
	" Dutchman 2 days at T. table	2	75
	" paid for oil-can		60
50	Sill, Loomis & Root, bills sundrys for building as above	3,618	06
		$9,993	12
	Services self	300	00
		10,293	12

Rec'd payment. W. R. SILL.

S. Chamberlain to A. Hobart, Dr.

Oct. 14, 1858.	To work of carpenters on depot and turntable at La Crosse, 1,006 days, average price paid them, 13s.	1,635	00
	Own time at work 40 days, and furnishing men and tools	200	00
		1,835	00

Rec'd payment by hands of W. R. Sill. A. HOBART.

275 S. Chamberlain to J. S. Bantam & Co., Dr.

1858. To work driving piles for depot as follows:

Under main building 113 days' work, at 2½	$169 50
For scow boat purchased	50 00
For 11 days machine, at $10 pr. day	110 00
For 11 " superintending, at $5	55 00
For 10 " horses, 3	30 00
For keg spikes	4 00
	$418 50

Allowed on above bill, by J. M. L. Staughton, 369 50 for work on platform as follows:

For 73 pine piles at 60 cts	43 80
7 white oak, 14s	12 25
14 days, machine and horses, $13	182 00
132 " men, at 10s	165 00
14 " " " 12s	21 00
14 " superintending, 20s	35 00
	$459 05
Allowed on above by Stoughton	425 00
	$794 50

Rec'd of S. Chamberlain by hands of W. R. Sill, seven hundred and ninety four 50-100 dollars on ac't of above bill.

J. S. BANTAM & CO.

S. Chamberlain to Hartley & Manifold, Dr.

Nov. 1, 1858. To work on engine-house as follows:

276

36 days of lathing at $2 25	$82 12
85½ days, men at 2 00	171 00
108½ " " 1 50	162 00
	$415 12
Discount	15 12
	$400 00

Rec'd payment by hands of W. R. Sill.

HARTLEY & MANIFOLD.

S. Chamberlain to J. H. Fraron, Dr.

Oct. 15, 1858. To work on b. s. shop and small depot, 37½ days, at $2 00 ..... $75 00

Rec'd payment of W. R. Sill. JAMES K. FRARON.

S. Chamberlain to B. Shute, Dr.

Nov. 1, 1858. To work of self on b. s. shop, and depot, 24½ days, at $	$49 00
For labor of man, 30 days, $1	30 00
	$79 00

Rec'd payment by hands W. R. Sill. BENJAMIN SHUTE.

277 S. Chamberlain to Gunkle & Bloomer, Dr.

Aug. 26.	To 11,050 bricks.....$7 50	delivered.....	$187 57
Sept. 25.	To 14,100 do 7 50		
	Payments Aug. 28, $50, Sept 25, $100		150 00
			$37 57

Rec'd payment Oct. 18, '58. A. W. GUNKLE.

$73 42. SEPT. 18, 1858.

Received of S. Chamberlain, by the hands of W. R. Sill, seventy-three 42-100 dollars for account of stonework on turntable and smith shop.

No. A. W. SHEPARD.

S. Chamberlain to A. W. Shepard.

1857.	To 384 c. feet masoning in turntable at 15½ cts. pr. foot....	$59 52
	To for forges, 8 pr.....	10 00
	To 2 l'ds stone left on ground.....	3 90
		$73 42

LA CROSSE, *Oct.* 8, '58.

La Crosse and Milwaukee R. R. Co., Dr., to James Rawlinson.

To work on turntable and smith's shop:

J. Rawlinson, 16¾ days, at $2 75 per day.....		$46 66¼
W. Rawlinson, 10¾ do. 2 50		26 62½
F. Rawlinson, 12 do. 2 50		30 00
P. Nolan, 16¾ days, at 1 25		20 18¼
		$123 50
Cash paid.....		47 00
278 Bal. due.....		$76 50

Rec'd payment by hands W. R. Sill.

JAMES RAWLINSON.

S. Chamberlain to C. Coleman, Dr.

Aug. 30, 1858.	To 12 M shingles, depot, 2 40.....		$28 80
Sept. 13,	To 28 M do., engine-house, 2 40.....		67 20
16,	To 7 M do., 2 40.....		16 80
18,	To 7 M do., N. L. and depot, $2 40.....		10 80
			129 60

Rec'd payment by hands of W R. Sill. C. L. COLMAN.

S. Chamberlain to S. T. Smith, Dr.

Oct. 1, 1858. To 50 M shingles for depot, at $2 50..... $125 00

Rec'd payment by hands of W. R. Sill.

SAM'EL T. SMITH.

S. Chamberlain to W. B. Hanscome, Dr.

Oct. 15, 1858. To 10½ M shingles used on water-house, at $2 50 ..... $26 25

Rec'd payment by hands of W. R. Sill.

WM. B HANSCOME & CO.,
Pr. H. C. D.

Chamberlain & Co. to Benjamin Horton, Dr.

July 28, 1858. To 13 M shingles, at $2 00 ..... $26 00

Received payment. BENJAMIN HORTON.

279 $31 20. SEPT. 11, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, thirty-one 20 100 dollars for account of smith work on depot.

No. —. ISAAC BALEY.

$59 30. OCT. 22D, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, fifty-nine 38-100 dollars for account of payment in full for smith work to date.

Am't being $90 58
Payment 31 20

Bal $59 38

No. —. ISAAC BALEY.

[Duplicate.]

S. Chamberlain to E. K. Buttrick Bro., Dr.:

Aug. 23.	To dressing	2,500	feet	depot	.....	$11 25
" 31.	"	"	"	"	.....	11 25
Sept. 2d.	"	200	"	"	.....	50
" 3d.	"	1,500	"	track	.....	6 75
" 6th.	"	2,500	"	"	.....	11 25
" "	edging			"	.....	3 75
" 13.	To 430 feet dressed flooring, E. H.				.....	9 00
" 21.	67	"		E. H.	.....	1 35
" "	508	"		"	.....	10 16
" 22.	dressing 1,500 feet, E. H.				.....	6 75
" 23	edging 884	"			.....	1 32
To order on Newton for him					.....	26 70

$100 03

Rec'd payment by hands W. R. Sill.

E. K. BUTTRICK BRO.

280 LA CROSSE, *Octo.* , 1858.

Messrs. S. Chamberlain & Co. bought of Bame & Wells, wholesale and retail druggists, dealers in foreign and domestic drugs, medicines, chemicals paints, dyes, salts, acids, oils, varnishes, brushes, patent medicines, instruments, perfumery, and other articles for druggists and apothecaries, No. 1 Front Street:

Aug't	3.	3 boxes glass, 12x18, $3 70	$11 10
		10 " whiting, 5c	50
		14 lights glass, 12x18, $1 75 doz	2 05
		108 " sash, 12x16, 8c	8 64
	4.	1 q't whale oil	30
	30.	25 lb. whitelead	2 25
	30.	1 box glass, 9x12	3 20
		1 " 10x14	3 50
		26¾ lbs. putty, 7c	1 88
		glazier's points	25
		4 doz. glass, 9x12, 6c; 1 do. 10x14, 8c	4 90
		Work for Bentley	7 00
Sept.	1.	25 lbs. whitelead, 18c.; gill linseed oil, 8c., engine-house	3 25
	2.	2 boxes glass, 12x18, $3 70	7 40
	3.	2½ doz. 12x18 glass, $1 75 doz	3 65
	16.	1 doz. glass, 10x12, $1; 3 lights, 9x12, 18c	1 18
	24.	12 lights, sash, 12x16, 8c	96
		12 " glass, "	1 50
Oct.	1.	2 doz 10x15 glass, $1, (Al'o Rosevelt.)	2 00
			$64 61

Rec'd payment Oct. 7, '58.

BAME & WELLS.

281 MILWAUKEE, PR. DU CHIEN, AND ST. PAUL RAILROAD PACKET,
(*Capt. Stephen Hewitt,*) *La Crosse, 7th Aug't,* 1858

Mr. W. R. Sill to steamer Milwaukee, Dr.

To freight on 1 keg h'ware	$1 00
Charges	15 38
	$16 38
	12
	$16 50

WEBB & RUMSEY.

$22 15. OCT. 8TH, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, thirty-two 15-100 dollars, for account of being balance for team work to date.

No. —. SEELY & SHOLES.

$30. SEPT. 18, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, thirty dollars for account of team work on engine-house.

No. —. SEELY & SHOLES.

$10. SEPT. 4TH, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, ten dollars for account of team work on engine and water houses.

No. —. J. S. SHOLES.

$20. SEPTEMBER 11, 1858.

Received of S. Chamberlain, by the hands of W. R. Sill, twenty dollars for account of team work at engine-house.

No. —. SEELY & SHOLES.

282 $10. SEPT. 4TH, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, ten dollars for account of team work on engine, water, and smiths' houses.

No. —. H. S. SEELY.

$10. AUG. 26, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, ten dollars for account of team work on engine-house.

No. —. J. S. SHOLES.

$10. AUG. 26, 1858.

Received of S. Chamberlain, by the hands of W. R. Sill, ten dollars for account of teaming, water-house.

No. —. H. S. SEELY.

Mr. Sill & Co., Dr., to H. S. Seely & Sholes:

Aug.	16th.	2¼ days' work	$1 75
	17	2¼ " "	1 75
	19	2¾ " "	5 25
	20	2¾ " "	5 25
	23	2 " "	7 00
	24	2½ " "	3 50
	25	2½ " "	3 50
	26	2½ " "	3 50
	27	2½ " "	3 50
	Cr. by cash, $20.		
Aug.	28th.	2¾ days' work	5 25
	29	2½ " "	3 50
Sep.	3	1 " "	3 50
"	4	2½ " "	3 50
283	Cr. by cash, $20.		
	Tole on the above		3 30
			$54 05

Mr. Root & Co., Dr.:

To 8 days' hauling slabs	28 00
Tole on the above	80
	28 80
	54 05
	$82 85

Sept.	6.	2 days' work	7 00
	7.	2 " "	7 00
	8.	2 " "	7 00
	10.	2 " "	7 00
	11.	2½ " "	3 50
		Tole on the above	1 20
			115 55
		Cr. brought over	40 00
			$75 55

Total amount of above bill being, work to Sept. 11	$115 55
Deduct 8 days' work	23 80
	$86 75
Work from Sept. 13th to 22d	35 40
	$122 15

Mr. Sill & Co. to H. S. Seely:

Sept. 13.	2 days' work	7 00
14.	2½ " "	3 50
284 Sept. 15.	2½ days' work	3 50
16.	2½ " "	3 50
Sept. 18.	2½ days' work	3 50
20.	2¼ " "	1 75
21.	2¾ " "	5 50
22.	2¼ " "	1 75
11.	2½ " "	3 50
23.	½ " " hauling wood	1 75
Tole on the above		1 90
		37 15
Less item Sept. 23d		1 75
		$35 40

S. Chamberlain to J. W. Jones, Dr.: 1858.

To painting on depot, as per measurement of Bennet & Hobart, $107.
Received payment by hands W. R. Sill.

JOSHUA W. JONES.

E. A. Tenny. }
S. B. Oatman. } La Crosse stove store. { H. W. Fales. / E. Chamberlain.

Ocr. 8*th*, 1851.

Mr. Wm. R. Sill, for S. Chamberlain, bought of Tenney, Oatman & Co., (successors to G. Raymond,) wholesale and retail dealers in stoves and tin ware, sheet iron, copper and tin plate, farming implements, and hardware, agents for Huron grindstones, Manny's Reaper, and Clark's patent sythe snaths, Front street, La Crosse, Wis.:

Sept. 15.	4 thimbles, per Rosevelt	60
21.	2 ventilators, " "	2 00
Sept. 22.	2 thimbles, self	30
285 25.	4¼ lbs. zinc, "	64
25.	1 thimble	15
Sept. 30.	Zinc and pipe and labor at North La x	1 25
Oct. 7.	2 box stoves, 15½	31 00
	58 lbs. pipe, 10	5 88
	2 elbows, 1s	2 15
	18 lbs. zinc, 15	21 70
	10 y'ds wire	20
		$14 89

Received payment.

TENNEY, OATMAN & CO.

1858.

La Crosse and M. R. R. Dr.:

Aug. 29.	To 4	$2 00
31.	Repair bolts for tank	
Sept. 1.	Make 28 washers, 1 belt repair	
	12 splice, 4 and , Pitman	
	To tank twice	3 25
2.	To repair tank handle, repair six bolts, make six washers, enlarge clips for spout, and make two plates	1 75
3.	Repair wrenches	25
14.	Make eight bolts, by Hall	2 60
	" splice augur, by Hall	25
15.	Splice one bolt, 18½ bolt, by Hall	1 00
21.	Staples and latches, by shoes	75
24.	Repair hinges for doors	20
25.	Staples for ventilator, by Fearer	25
	Repair bolt for engine	15
		$13 10

Received payment.

H. D. GREELEY.

286 1858.

Mr. W. R Sill in ac't with Lloyd & Suplee, Dr:

July 29.	To 167 lbs. 1¼-in. r'd for depot, 4½c	7 51
	92 lbs. ¾-in. " " 5c	4 60
30.	35½ " sq'r " " 4½c	1 60
	16½ ⅝ " " " 5c	83
31.	1 keg 10d. nails, "	4 25
	1 padlock, 40c.; hask and staple, 25	65
Aug. 2.	1 cross-cut saw, dep't	3 00
	1 file	30
	16½ lbs. ⅝ sq'r iron, depot, 5c	83
	25 " ¾ " " " 5c	1 25
	46½ " 1-in. " " " 4½	3 00
	1 basket	25
3.	548 lbs. 1¼-in. round iron, 4½	24 00
	1 axe and handle	1 25
	1 keg 20d. nails, depot	4 25
5.	1 padlock	40
6.	19½ lbs. rope, 14	1 89
	1 cross-cut saw, $3 00; 1 file, 30c., "Hobart."	3 30
	1 crowbar, 23 lbs., 10c	2 30
7.	45 lbs. iron, ¾x⅝, 5c	2 25
	3 " nails	15
9.	1 15 in screw wrench	2 25
	5½ lbs. washers, 14c	77
	29 lbs. rope, 14c	4 06
	15½ lbs. ¾ round iron, "Buley," 5c	78
287	15 " ⅝ sq'r, " " 5c	75
11.	58½ " ¾ round, 5s	2 92
	31 " nuts, 1c	3 88
30.	3 kegs 20d. nails, damg'd, 3¼	9 75
	3 " 10d. nails, damg'd, 3¼	9 75
	Forward	103 44
	Am't bro't forward	103 44

Aug. 14.	To 45 lb. iron, $\frac{3}{4}$		2 25
	4 " washers, 14c		56
16.	37 lb. $\frac{3}{4}$ round iron 5c		1 85
	41$\frac{1}{2}$ " " bo't for Buley		2 66
17.	9 lb. $\frac{7}{8}$ sq'r., 5c		45
20.	1 keg 20d. nails, engine-house, dam'g'd		3 25
	2 " 10d. " " " 3$\frac{1}{4}$		6 50
	1 " 8d. " " " "		3 25
	1 "		4 25
	2 " 10d. " " " 3$\frac{1}{4}$		6 50
	2 " 20d. " " " 3$\frac{1}{4}$		6 50
24.	7 lb. 4d. " blacksmith shop		35
25.	2 kegs 4d. " engine-house, 5c		10 00
	2 " 8d. " depots, dam'g'd, 3$\frac{1}{4}$		6 50
	1 " 10d." " " 3$\frac{1}{4}$		3 25
	180 lb. 1 in r'nd iron, engine-house, 4$\frac{1}{2}$c		8 10
	17$\frac{1}{2}$ lb. $\frac{7}{8}$ sq'r, " "		88
	1 keg 4d. nails, depot		5 00
	75 lb. 4d. " "		3 75
28.	1 keg 20d. "		4 25
30.	3 p'r staple hinges, 50c		1 50
	6 lb. wr'ght nails, Am., 1s		75
31.	5 doz. screws, 5c		25
288	1 keg 20d. nails, depot		4 25
	108 lights, sash, 9x12, 5c		5 40
	60 " 10x14, 6c		3 60
	1 keg 4d. nails		5 00
	1 augur, 1$\frac{1}{2}$, depot		75
	1 " $\frac{7}{8}$ "		45
	2 handles "		20
Sept. 1.	Chalk		15
	1 rimlock		75
	Forward	206	59
	Am't bro't forward	206	59
Sept. 1.	To 6 coach screws, depot, 5		30
	1 thumb-latch		15
	6$\frac{1}{2}$ lb. iron, 4$\frac{1}{2}$		29
3.	1 keg spikes	4	25
	8 lb. iron, blacksmith shop, 4$\frac{1}{2}$		36
7.	1 keg nails, depot, 3d	6	00
	$\frac{3}{4}$ lb. washers, 10c; washers, same date, 5c		15
8.	3 kegs nails, 20d, 4$\frac{1}{4}$	12	75
	17 lb. iron, 2$\frac{1}{2}$x$\frac{1}{4}$., blacksmith shop		85
11.	1 spirit level, depot	1	75
13.	10 lb. nails, 50c; 1 gage, 15c; chalk-line, 15		80
	2 washers, 14		28
14.	31$\frac{1}{2}$ lb. $\frac{7}{8}$ r'nd iron, 5c	1	58
	6 lb. nuts, $\frac{3}{4}$, 1s		75
	1 lb. washers, 14c		14
	6 lb. nails, 5c		30
15.	1$\frac{1}{4}$ lb. washers, 14c		18
289 16.	12 lights, sash, 6c		72
	5 lb. wrought nails, Amer		62
17.	1 augur		38

Sept. 14.	18 lb. iron, $1\frac{1}{8}$x$\frac{1}{8}$, Junietta, 7c		1 26
	$5\frac{1}{2}$ lb. nails, 5c		27
	10 lb. wrought nails, Amer		1 25
	36 lb. $\frac{3}{4}$ sq'r. iron, by Buley		1 80
	108 lb. fire " "		4 86
18.	2 gross screws, 2 in., No. 14, 90c. ea		1 80
	1 keg 40d. nails, depot		4 25
	$4\frac{1}{2}$ lb. nuts, " 1s		56
	8 lb. nails, " 5c		40
	$14\frac{1}{2}$ lb. iron, $\frac{1}{2}$ in. " $5\frac{1}{2}$		80
	2 set barn door rollers, depot, 6s		1 50
	1 rimlock and knob		50
	Forward		258 44
	Am't bro't forward		258 44
Sept. 18.	To 1 p'r butts and screws		20
20.	28 lb. wr'ght nails, by Hartley, English		3 08
	Sand paper		06
21.	74 carriage bolts, $\frac{3}{8}$x$3\frac{1}{2}$ in		2 59
	5 lb. nuts, 63c.; 29 lb. iron, 145		2 08
22.	$2\frac{1}{2}$ lb. washers		35
	1 gross screws, $1\frac{1}{4}$, No. 14, depot		65
	3 p'r butts, $3\frac{1}{2}$x$3\frac{1}{2}$, 15c		45
	1 doz. " $4\frac{1}{2}$x$4\frac{1}{2}$, "		2 75
	1 lock and knob		50
	6 " 6 in. at $1 00		6 00
	4 lb. fin. nails, 7c		28
23.	2 kegs 8d. nails, $4\frac{1}{4}$		8 50
290	1 " 3d. "		6 00
	13 lb. $\frac{3}{4}$ round iron, 5c		65
25.	3 p'r butts and screws, at 15		45
	1 bed cord		25
	2 pully and screws		25
	1 gross screws, $1\frac{1}{2}$ in., No. 11		85
	1 " $1\frac{1}{2}$ in., " 14		75
	4 " $1\frac{1}{2}$ in., " 10, at 55		2 20
Octo'r 1.	24 lights, 10x16, 6c		1 44
4.	$13\frac{3}{4}$ lb. iron, 2x$\frac{1}{4}$		52
	$3\frac{1}{4}$ lb. 7-16 r'nd iron, 6c		20
	182 lb, shoe shape, by Buly, 5c		9 10
	102 " " 5c		5 10
5.	2 lb. fin. nails		13
	1 paper "		15
	23 lb., shoe shape, 5c		1 15
	8 lb. hinges, engine-house		1 00
	2 brass h'ks, depot		10
7.	10 lb. nails, depot		50
			$316 72
	Am't bro't forward		$316 72
Octo'r 8.	To 12 lb. nails, depot, 5c		60
	1 paper tacks		10
Octo'r 9.	1 gross screws, depot, $2\frac{1}{2}$, No. 17		1 60
	1 keg nails, "		4 25

Octo'r 9.	1 rimlock and knob, d'r		1 75
	1 " "		50
	1 p'r butts and screws		15
	1½ " " 25c		38
	2 lb. fin. nails		13
291	Sand paper		12
11.	paper finish. nails		15
12.	4 lb. "		26
	2 gross screws, 1½ in., No. 13, at 60		1 20
13.	5 ft. rubber hose, 2 in., at 50c		2 50
15.	15 lb. rope, engine-house		2 10
	9 p'r strap hinges		2 25
	6 large screw pulleys, 20c		1 20
15.	10 lb. wrought nails, English		1 10
	Bronz brackets		1 25
9.	1 lock and knob		75
	1 p'r brass butts, 3 in., and screws		25
Sept. 27.	26 lb. ⅝ r'nd iron, by Buley, at 5c		1 30
	102 " " " 5c		5 10
	20 lb. nuts		2 50
	4 rimlocks and knobs, 1 75		7 00
	3 cross screws, 1¼ in., No. 10, 55c		1 65
	1 p'r barn door hangings		75
	14 f't " rail		1 12
	Bolts		20
	14½ lb. ½ inch round iron		80
	1 gross screws, 1¾, No. 10		60
	3 p'r barn door hangings, $1 50		4 50
			$364 83
		$364	83
Sept. 28.	18 bolts, 5-16x2¼		45
	12 lb. ½ in. oval iron, Junietta, at 7½		90
	1 keg 3d. nails		6 00
	2 kegs 10d. nails, at 4 25		8 50
30.	Sand paper		10
		$380	78
292	Cr. By cash	175	00
		$205	78

Rec'd, Nov. 5th, 1858, of W. R. Sill, for S. Chamberlain, two hundred five 78-100 dollars, being bal. of above ac't.

LLOYD & SUPPLEE.

$9 00. Aug. 28, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, nine dollars for account of 6 days' labor on water-house, as p'r Palmer's bill time.

No. —. J. A. KNAPP.

$20 00. SEPT. 27*th*, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, twenty dollars for account of 12 days' labor on water-house.

No. —. DAN. A. SPENCER.

293 *Pay-roll of men on water-house, at La Crosse, in Sept.*, 1858.

Names.	Time in days.	Price per day.	Amount.	Rec'd payment by the hands of W. R. Sill.
U. Palmer	9¾	2 00	$19 50	N. Palmer.
Avery Downer	9½	1 62½	15 44	A. Downer.
Wm. Smith	10½	1 62½	16 65	Wm. Smith.
John Graham	9½	1 37½	13 06	John Graham.
D. A. Spencer	10	1 50	15 00	P'd Spencer and took rec't in rec't book.
Jas. McCarty	10¾	1 50	16 12	James McCarty.
			95 77	

Pay-roll of men on tank-house, in La Crosse, month of August, 1858.

Names.	No. of days.	Price per day.	Amount.	Rec'd payment.
N. Palmer	9¾	$2 00	$19 50	N. Palmer.
Avery Downer	8¾	1 62½	14 22	A. Downer.
Wm. Smith	9¼	1 62½	15 04	Wm. Smith.
John Graham	8¾	1 57½	12 03	John Graham.
D. A. Spencer	8¾	1 50	13 12	D. A. Spencer.
D. Kenyon	9½	1 50	13 87	D. A. Kenyon.
			87 78	
D. Kenyon, time in Sept.	3¼	1 50	4 88	D. A. Kenyon.
			92 66	

Pay-roll of men employed on well and turn-table.—P'd A. Downer, foreman, time up to Sept. 1858.

Names.	No. of days	Price.	Amount.	Rec'd payment of W. R. Sill.
Michael Magee.....	1½	1 00	$1 50	
Michael McMastua....	10	1 00	10 00	
Pat. Kennedy.....	4¼	1 00	4 25	
Martin Casey.....	1	1 00	1 00	
Timothy Cronan.....	4½	1 00	4 50	Timothy Cronan.
John O. Connor.....	9¾	1 00	9 75	John O. Connor.
Philip Carlin.....	9	1 00	9 00	Philip Carlton.
John F. Hiland.....	4¾	1 00	4 75	J. F. Hiland.
Thos. Banke.....	4½	1 00	4 25	Thomas Banke.
John Wilke.....	4	1 00	4 00	John Wilke.
Michael Daly.....	1	1 00	1 00	Michael Daly.
Philip Conlin.....	¾	1 00	75	P. Conlin.
			54 75	
P'd b'y Downer.....	.....	.....	1 30	
			56 05	

$20 50. AUG. 30*th*, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, twenty 50-100 dollars, for account of twenty and ½ days' labor on depot.

No. —. JERRY O. his ⋈ mark. LEARY.

$20 50.

Rec'd, La Crosse, Sept. 3d, 1858, of S. Chamberlain, by hands of W. R. Sill, twenty and 50-100 dollars for 20½ days' work on depot.

THOMAS MADIGAN.

$14 00. SEPT. 4*th*, 1858.

Rec'd of S. Chamberlain, by the hand of W. R. Still' fourteen dollars for account of 4 days, team work hauling lumber to water and engine-house.

No.—. FRANCIS HUIRT.

295 S. Chamberlain & Co. to Edward Kennedy, Dr.

Sept. 1, '58.	To running rafts of to		$2 00
2.	To 30 piles.....		2 40
	To 4 piles for depot, 15 c.....		60
			$5 00

Rec'd payment.

E. KENNEDY.

$21 95. SEPT. 18th, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, twenty-one 95-100 dollars, for account of running lumber and logs to depot.

No. —. EDWARD KENNEDAY.

$8 17. Oct. 6, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, eight 17-100 dollars, for account of painting and glazing 108 lights for depot, drayage 25.
No. —. E. S. BENTLY.

296 *Pay-roll of men on willow dock at depot in October*, 1858.

Names.	No. days.	Price per day.	Amt.	Rec'd payment.
Thos. Manning.....	2½	1 25	$3 12	Charged in cash book at and deducted in item.
Jos. Brooks.....	9	1 25	11 25	Joseph Brooks.
Peter Christen.....	12¼	1 25	15 38	Peter Christen.
Cann Lunte.....	10	1 25	12 50	
Mathias Ruth.....	12¼	1 25	15 30	Mathias Ruth.
Anton Balzee.....	10¼	1 25	12 80	Anton Balzee.
Mathias Bery.....	11¼	1 25	14 05	Math. Bery.
Peter Hans.....	11¼	1 25	14 05	Peter
Nich. Feller.....	9¼	1 25	11 55	Nicholas Feller.
Barthel Nicholas.....	11¼	1 25	14 05	Barthel Nicholas.
John Junyen.....	10	1 25	12 50	John B. Junyen.
Mike Sauer.....	11¼	1 25	14 05	Michael Sauer.
John L. Nuffer.....	11¼	1 25	14 05	John Nuffer.
Jas. Macaley.....	1¼	1 25	1 55	James Macaly.
Peter Erm.....	7½	1 25	9 37	Peter Erm.
Darius Holloran.....	8	1 25	10 00	D. Holloran.
Pat. Holloran.....	8	1 25	10 00	Pat. Holloran.
Chas. Watler.....	8	1 25	10 00	Chas. Watler, his x mark.
Frank Baker.....	5	1 50	7 50	Francis Baker.
Chas. Hurn.....	7	1 25	8 75	Charles Hurn.
Capt. Faultien.....	1¼	2 00	22 50	
Flat-boat.....	12	50	6 00	
			$250 24	
A. W. Barron for willows			12 50	A. W. Barron.
			$262 74	

297 S. Chamberlain to Wm. Downes, Dr.

Oct. 15, 1858.	To lathing and plastering depot, 850 yds., at 12½ c..	$106 25
	To do. do. engine-house, 925 yds., at 10 c..	92 50
	To laying chimneys.....	31 25
		$230 00

Rec'd payment by hands W. R. Sill.

WILLIAM DOWNS.

$10 50. August 31st, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, ten 50-100 dollars for account of 9 days' labor and 3 days' use of boat on piling for depot.
No.—. CYRUS TUCKER.

S. Chamberlain to N. Rosevelt, Dr.

Oct. 16, 1858. For work, boating carpenters and doing errands from depot, 69 days, at $1 00 ..... $69 00
In expenses on boat 40

$69 40

Rec'd payment by hands W. R. Sill.

N. ROSEVELT.

$5 75. SEPT. 20, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, five 75-100 dollars, for account of hauling turn-table timber.

No. —. his WM. × BRANCH. mark.

298 $24 11. OCT. 18, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, twenty and 11-100 dollars, for account of team work to date, hauling lumber, sand, and water.

No. —. WILLIAM BRANCH.

S. Chamberlain to John Branch, Dr.

Aug., 1858. To one day with team and men hauling timber to turn-table $4 00
To one half day on do 1 75

$5 75

Rec'd payment.

S. Chamberlain to Wm. Branch, Dr.

Sept. 22, 27, 28. Team work $3 87
Oct. 2, 3, 4. Team work, 2½ days 8 12
" 7, 8, 9. Team work, 2½ 8 12

$20 11

$20. SEPT. 23d, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, twenty dollars, for account of lime for depot.

No. —. J. B. NEWTON.

S. Chamberlain to Ed. Horan, Dr.

Nov. 20, 1858. For 25½ days' work on engine and water houses, turn-table, &c., at $1 00 ..... $25 50

Rec'd payment by hands W. R. Sill.

his ED. ⋈ HORAN. mark.

299 S. Chamberlain to T. Madigan, Dr.

Nov. 25, 1858. For 42½ days' work, from Sept. 20 to date, digging drain and working about engine and water house, &c., at $10 ..... $42 50

Rec'd payment by hands W. R. Sill.

his
T. ⋈ MADIGAN.
mark.

$12 75. Oct. 19th, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, twelve 75-100 dollars, for account of 8½ days' carpenter work on engine-house and turn-table.
No. —. JAMES NICHOLS.

$24 50. Oct. 19th, 1858.

Received of S. Chamberlain, by the hand of W. R. Sill, twenty-four 50-100 dollars, for account of 14 days' work.
No. —. M. W. KEYS.

S. Chamberlain to Geo. Leach, Dr.

1858. To cutting 18 bolts and nuts for depot $12 00
" " lot small do., depot and platform 8 00

$20 00

Rec'd payment by hands W. R. Sill.

GEO. M. LEACH & CO.

300 Mr. Sill bo't of C. W. Thompson.

Nov. 2, 1858. Bill of lumber for turn-table $75 00
Additional bill 16 25

$91 25

The above bill was delivered, and stands charged to me on acc't, by C. W. Thompson.
Rec'd payment of above from S. Chamberlain.

W. R. SILL.

W. R. Sill to Crosby, Hanscom & Co., Dr.

Nov. 4th, 1858. To 20 M lath, at $2 00 ..... $40 00
10th, 2,200 " " 4 40

$44 40

Rec'd payment.

CROSBY, HANSCOM & CO.

S. Chamberlain to N. Southard & Co., Dr.

Aug. 25, 1858. To dressing and splitting 3 M ft. for depot $12 00
26, " " 4 " " 16 00
Oct. 19, " battens, 1,000, " 3 50
" dressing 3,500 ft. " 8 75

$40 25

Rec'd payment by hands W. R. Sill.

N. SOUTHARD & CO.

301 La Crosse, *Oct.* 1858.

La Crosse & Milwaukee Railroad Co., pr. W. R. Sill, to Thomas Child & Co., Dr.

12.	For 2 box stoves, $10 00	$20 00
	126 lbs. pipe, 1*s*	15 75
	34¾ zinc (office) 15	5 22
	Wire 25, hooks, 25	50
15.	15¼ zinc (office) 15	2 28
	1 joint pipe and elbow 80, wire 15, hooks 20	1 15
20.	17 lbs. zinc for wash-room 15	2 55
	Copper tacks 15, solder 25, 5 hrs. work	1 90
	18¼ lbs. lead pipe, 1*s*	2 28
		$51 93

Rec'd payment Nov. 1, 1858.

THOS. CHILDS & CO.

$33 00. La Crosse, *Oct.* 9, 1858.

Mr. W. R. Sill to M. Goddard, Dr.

Aug. 19th.	To 1	day	with branch drawing timber
Sept. 6.	" ½	"	hewing
7.	" 1	"	"
8.	" 1	"	passenger depot
9.	" 1	"	" "
10.	" 1	"	" "
11.	" 1	"	" "
13.	" 1	"	" "
14.	" ½	"	" "
15.	" 1	"	hewing
16.	" 1	"	"
17.	" 1	"	"
18.	" 1	"	engine-house
20.	" 1½	"	on engine-house, ½ hewing
21.	" 1	"	hewing
22.	" 1	"	" and rafting
23.	" 1	"	taking out raft and cutting willows
24.	" 1	"	cutting willows
25.	" 1	"	"
27.	" 1	"	"
28.	" 1	"	"
29.	" 1	"	"
30.	" 1	"	"
	22 days, 1 50 pr. day		$33 00

Rec'd payment by hands W. R. Sill.

MASON GODDARD.

No. 1. La Crosse, *Wis.*, *November* 10*th*, 1858.

At sight, pay to the order of Lloyd & Suplee ten 30-100 dolls., value received, which place to account of to Wm. R. Sill.

Paid, La Crosse, Wis. CHARLES M. NICHOLS.

S. Chamberlain to John Davis, Dr.

Nov. 1st, 1858. To 4½ days' work on engine-house and smith shop..$21 75

Rec'd payment.

I hereby certify that I have paid the am't, at different times, for work as above, and took rec'ts on ac't. W. R. SILL.

303 LA CROSSE, *Nov. 4th*, 1858.

W. R. Pill to W. G. Thurston, Dr.

Nov. 4th, for 8½ days' work, engine-house and B. shop, a 14s..... $15 00

WM. G. THURSTON.

S. Chamberlain to Wm. Lousbrow, Dr.

Oct., 1858. For 28 bbls. lime used in engine-house, at 6s..... 21 00

Rec'd payment by hands W. R. Sill.

WILLIAM LOUSBROUGH.

$37 50. AUG. 17*th*, 1858.

Received of W. R. Sill, thirty-seven dollars 50 cents, on account freight of timber from Hohah, for R. Rd. turn-table.

ROBERT DOUGLASS.

S. Chamberlain to W. R. Sill, Dr.

Sept. 1, 1858.		For cash p'd F. M. Rublee, receiver—	
		For 2 kegs nails for depot.....	$8 00
		P'd Hutchinson for oak plank for keys.....	1 50
		P'd John Branch for items team work.....	3 50
July 20.		P'd expenses to Milwaukee for plans.....	7 30
Nov. 1.		P'd at sundry times.....	14 40
		P'd drayage to Metcalf and others diff'et times.....	9 00
	Aug. 4.	P'd for rope, 50; oil can, 30.....	80
304	14.	P'd Morris & Co. for rigging for blocks.....	4 05
	Nov. 1.	P'd Welch and others at sundry times boat hire....	13 25
	"	P'd sundry incidental expenses in finding timber for turn-table.....	12 00
		P'd Gardner & Graham for 3 shovels.....	1 50
		P'd for thimbles for water-house.....	1 25
		P'd for boxes for storing lime.....	1 00
Oct. 6.		P'd Dutchman 2 days' work on turn-table.....	2 75
		P'd for oil can.....	60
		P'd T. Morris for rope.....	55
		P'd " 9 bushels hair.....	4 50
		P'd " rope.....	70
			$87 15

Rec'd payment. W. R. SILL.

To above add bill for personal uses, for which I have received payment..... $3 00

W. R. SILL.

305 S. Chamberlain to Sill, Loomis & Root, Dr.

For the following bills of lumber for depot, engine-house, water-house, eating-house, blacksmith's shop, turn-table at La Crosse:

Aug. 8.	Team work on depot	4 50
" 31.	To bill joist and plank depot, 97,902, $13	1,272 72
	4,500 feet f'g, dressed, $22	99 00
	6,800 " 2d clear, planed, $20	136 00
	3,260 " clear b'ds and plank, $25	81 50
Sept. 30.	timber for water sta., 5,770 f't, $12	69 24
	" " B. S. S, 2,276, 12	27 29
	joist and plank, 737, 12	8 78
10.	timber for eng. house, 17,800 ft., 12	213 60
	siding plank and b'd, 17,654 " 12	211 84
	5,033, 6	30 20
	joist and pl'k depot, 6,326, 12	75 91
	2 M shingles, 2½	5 00
	5,627 feet b'd and plank, b. shop, 12	67 52
	38 " clear b'd, 22	8 30
	plank, joist, and boards, W. H., 8,726, 12	104 71
	planed boards, 7,567, 20	151 34
	joist and plank for platform, 18,406, 12	220 87
	824 feet piles	8 00
	3, 284 feet clear and 2d clear	63 16
	19,281 " depot and platform timber, 13 00	249 83
306	2,298 " N. La C. depot, 13 00	29 87
	8,770 " timber and b'ds, engine-house	114 61
25.	2,370 " plank and tim., T. table	30 84
	3,622 " joist and plank depot	47 09
Oct. 6.	1,192 " " " "	15 49
	delivering 80 M feet to depot	32 00
	240 feet clear p'lk, engine-house	6 00
	To amount bro't forward	$3,385 21
	80 feet, 2 by 4	1 04
15.	2,138 feet boards and siding, E. H	7 79
	3,752 " plank for sewer	48 78
	4,841 " boards, E. H	62 93
	1,850 " 2d clear boards, depot	24 05
	37 long pile	37 00
	384 feet plank, T. table	4 99
20.	75 clear plank, depot	1 87
	99 piles for depot	59 40
	10,000 feet common lumber rec'd from S. Chamberlain & Co., and deducted from their bill on settlement	125 00
		3,778 06
	Less deduction	160 00
		$3,618 06

Rec'd payment. W. R. SILL.

S. Chamberlain, to Sill, Loomis & Root, Dr.

Dec. 1, 1853. For bill lumber for depots, &c., as before rendered and accepted $3,678 06

Rec'd payment. SILL, LOOMIS & ROOT.

307 District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTER, AND SHEPHARD Knapp, trustees, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others. } In chancery.

Depositions taken by consent, on behalf of the defendant, Selah Chamberlain, before Winfield Smith, one of the commissioners and masters of this court.

FRIDAY, 11 *May*, 1860.

Present: Mr. Cary for the complainants, Mr. Emmons for the defendant Chamberlain.

Edwin H. Goodrich, being duly sworn, deposes and says: I am the manager or superintendant of the Milwaukee and Minnesota Railroad Company, late the La Crosse and Milwaukee Company. I am the manager or superintendant of the railroad, part of which I understand to be involved in the subject-matter of this suit. I have been so since the first of October, 1856. I have been so during all the time that the road has been in operating order from Portage City west. I have the entire control of the business of the road in all departments, subject to Mr. Chamberlain. The road was first
308 opened west of Portage City for business August 20th, 1857. It was then opened to Kilbourn City. It was next opened to Manston, December 7th, 1857, that being the next point west to which the road was opened. It was opened at different times afterwards to different points west, until it was completed to La Crosse, which was on the first day of October, 1858.

There is a mode of determining the amount of the total expenses of operating the road west of Portage City since the 31st day of December, 1856, and also the total receipts of the road west of that place since that date. The amount expended for repairs, right of way, &c., during that period, can also be ascertained from the account kept. Mr. Royal D. Jennings has the papers and accounts showing these matters, and he can give you all the particulars. He is the general freight agent of the road. The making up of these statements is left to him, and is done by him according to my directions, and his statements are acted upon by me. I know whether that portion of the road west of Portage City has earned anything over and above the amount of expenses of running and repairs.

Question. What is the fact and what are the basis and sources of your information?

(Objected to by the complainants' counsel as irrelevant.)

Answer. If the basis adopted is correct, the fact is that the road west of Portage City has not earned enough to pay its running expenses
309 and repairs. I only know from the statements made up. The way in which we determined what are the earnings of that portion of the road is this: We credit to that portion of the road the amount of all the business done exclusively on that portion of the road, and we credit to it a proportion of the business done partly on that part and partly on the rest of the road, equal to the proportion of distance traveled by such business over that division of the road. Thus of business going over the whole length of the road we credit to that division one hundred and five two hundredths. So of business which travels thirty miles on that division, and fifty miles on the eastern division, we would credit thirty eightieths to the western division and fifty eightieths to the eastern division. To ascertain the expenses, we charge that division of the road with the road and bridges repairs actually done

upon that division, and with the station services, and all other expenses incurred entirely for the benefit of that division. As to running of trains, cost of fuel, oil, waste, &c., is divided in proportion to the amount of miles run by the trains on each division The details and results are within the more immediate knowledge of other officers of the company, and they can give you information about them.

Question. From your personal knowledge and observation as manager of the traffic and general business done upon the road, is it your belief that the western division has or not failed to pay expenses since it has been operated, and that the accounts of the officers and agents to whom you have referred are correct?

310 (Objected to as irrelevant and incompetent.)

Answer. It is my belief that the western division has failed to pay expenses since it has been operated, and I believe the accounts are correct. I have assisted in making out some of them, and I always tried to have them correct. We did not commence this system of accounting until after the road was completed, and then we carried it back to the first of August, 1858.

Cross-examination by Mr. Cary.

The whole length of the road from here to La Crosse is called two hundred miles; from here to Portage City ninety-five miles; and from there to La Crosse one hundred and five miles. In making up these accounts 105-200 of the expenses of the through trains have been charged to the account of the western division. Trains have been run only over the eastern division. The expenses of those trains have not been included in these accounts. None of the expenses would be charged to the western division, incurred exclusively for the eastern division. The station service here at Milwaukee has all been charged to the eastern division. Or more correctly, I should answer that the station service on the western division of the road has been charged to that division, and no other station service. The salaries of some officers of the road, five in number, are charged also to the different divisions of the road in proportion to their length. These are all we have which we call salaried officers. The pay of men in the shops is charged to the locomo-

311 tive repairs or car repairs, as it may be.

In estimating the expenses of running a train we make a charge on account of the rolling stock. The western division is charged for the use of the rolling stock. We charge it two cents a mile for passenger and baggage cars, one cent a mile for freight cars, and five cents a mile for locomotives, for every mile run on that division of the road, in addition to the expenses of repairs. The western division was also charged with its outfit of tools, hand-cars, crowbars, &c., which are on that division, in same manner as with water tanks, station buildings, &c.

(New matter.)

J. B. Boomer & Co. were the contractors who built the bridge at Portage City. The maps and parts of the western division which are yet in existence at the building of the company in Milwaukee.

EDWIN H. GOODRICH.

SATURDAY, 12 *May*, 1860.

Royal D. Jennings, being duly sworn, says: I am general freight agent in the employ of Mr. Selah Chamberlain, since he has been lessee of the La Crosse and Milwaukee railroad. I have charge of the freight business, and

the accounts of the station agents, making up freights, tariffs, and business pertaining to the freight department. I have nothing to do with making up the passenger earnings. That is in the department of J. M. Kimball, the general ticket agent. To get at the gross earnings would require an
312 inspection of his accounts and mine. I have been in the habit of making up the monthly statements of the road, taking his statements for the passenger earnings on the different parts of the road. I can furnish a statement of the earnings of the western division of the road from the first of August, 1858, to the first of March, 1860. This statement, marked A, is a correct statement of the gross earnings and gross expenses of the western division on the road during the period above stated, and shows a deficiency of $72,852 45, the expenses exceeding the earnings by that amount. I have books showing the monthly earnings and expenses during that time, and vouchers and books showing the items. Some of the vouchers show the expenses of the western division alone, and some of them show the expenses of both divisions together. Some of these expenses in these latter vouchers can be separated for each division, and some of them are divided proportionately between the two divisions. For a part of this period, I don't remember how long—perhaps a year—the expenses of the two divisions were not separated, but afterwards we went back through the accounts and separated them. When we first commenced to separate them, Mr. Keyes assisted me, and he and I together have since then made up the separate accounts of the two divisions, making monthly statements. This account marked "A" shows correctly the result of these accounts made up as stated. (Paper marked A hereto annexed, produced by the witness.) This account includes
313 the entire traffic of the western division of the road, both freight and passenger, and both local and through, during the period stated. Mr. Keys is the cashier. We have also a statement including the month of March of the present year. This paper, marked B, is a correct statement of the earnings and of the expenses of the western division of the road for the month of March, 1860.

(Paper marked B hereto annexed is produced by the witness.)

The statement for April is not yet made up, but will be completed, and I will give it to the commissioner by Thursday next. The books and vouchers which I have spoken of, from which the accounts are made up, are in the office in Milwaukee and are accessible.

Cross-examined by Mr. Cary:

The gross expenses of the whole line include all salaries of officers and agents of the road. The carriages included in the statement comprise the entire income of the road, of every kind and from every source.

If the freight business is local, we give to each division credit for the whole done on it. If it is through business, we divide it proportionally to the distance travelled on each division. As was explained yesterday by Mr. Goodrich, I suppose the passenger receipts are divided the same way, but I don't make up those accounts. The express company pays us so much; I think $800 per month, up to a certain amount of freight, and for any quantity over that amount they pay a certain price, 36 cents for 100 pounds, whether
314 the distance be more or less. That price was taken as an average, (being the rate for conveying freight to Portage City at the time the contract was made.) I believe there has never been an instance of excess. The receipts for extra baggage are entered in the ledger in the same account with the express receipts. The express receipts are divided between the divisions in proportion to the length of the divisions. The item of bridge tolls is for tolls collected at the Kilbourn City bridge, which are credited entire to the western division of the road. The receipts for telegraphing are divided also according to the length of the line. So also the mail ser-

vice in the same way. The terms of rent are for buildings in the city of Milwaukee. The receipts for the sleeping car are divided proportionally. Road repairs are the expenses of keeping the track in order. In the term station service is included the pay of station agents, warehouse-men, telegraph operators, and all other expenses necessary to keep the station, but not articles furnished for the use of the station. The items of expenses for building repairs, road repairs, bridge repairs, locomotive repairs, and car repairs, include only the sums expended for repairs on the buildings, road, bridges, locomotives, and cars respectively. In the item of "locomotive service" is included the pay of engineers and firemen. In "train service" is included the pay of conductors, baggagemen and brakemen. In the item of passenger agency is included the pay of men employed to solicit passengers for the road. The item "operating expenses" includes all expenses pertaining to the
315 whole line of the road, all not local in their nature. These classifications of receipts and expenses are substantially the same throughout the whole period.

R. D. JENNINGS.

John W. Kimball, being duly sworn, says: My occupation as general ticket agent of Mr. Selah Chamberlain, is keeping the general accounts of the passenger business, taking charge of the issue of tickets and other matters connected with the accounts of the passenger receitps. I furnish to Mr. Jennings statements of the earnings of the western division for passenger traffic. I have furnished him such statements for a period commencing 1st August, 1858, up to and including the month of March, 1860.

Those accounts were correct.

JOHN M. KIMBALL, *G. T. ag't.*

MONDAY, 14 *May*, 1860.

Dwight W. Keys, being duly sworn, says: I am the cashier, in the employ of Selah Chamberlain, lessee or mortgagee of the La Crosse and Milwaukee Railroad Company. I receive and disburse money for the road. I know always from what sources it comes, and for what purposes it is disbursed.

316 Question. Since August 1st, 1858, do you know of any payments made by Mr. Chamberlain for right of way on the western division, or in defence of suits or proceedings for right of way on the western division? And if so, state when and what; I do not care about all, but any that are within your knowledge.

Answer. There have been payments made by Mr. Chamberlain for right of way on the western division to Mr. Palmer, July 1st, 1859, to Messrs. Messenger, Van Horn and others, amounting in all to $2,862 48, up to 1st December, 1859. There have been other payments made since then for the same purpose, amounting to about three thousand dollars in addition. I do not know the exact amount. I do not include in this amount, amounts for which Mr. Chamberlain has become collaterally liable in cases where appeals have been taken. I know also that he has from time to time paid out sums for counsel fees in these cases, and in other right of way cases, where he has not paid money for the right of way.

DWIGHT W. KEYES.

317 A.

Statement showing the earnings and expenses of the northwestern and western divisions of the La Crosse and Milwaukee railroad from Aug. 1, 1858 to January 1, 1860.

Gross earnings		229,017 75
expenses		301,512 12
Excess of expenses over earnings to January 1, 1860		72,494 37
Statement continued to March 1, 1860:		
Earnings January	10,003 07	
February	11,412 34	
Total	21,415 41	
Expenses:		
January	12,246 80	
February	9,526 00	
	21,773 49	
Excess of expenses January and February		338 08
Total deficit from Aug't 1, 1858, to March 1, 1860		$72,852 45

317½ B.

Gross earnings of northwestern and western divisions of the La Crosse and Milwaukee railroad for month ending March 31, 1860.

	Northwestern.	Western.
For freight	2,498 67	1,258 72
" passengers	4,763 75	2,789 48
" express service	271 88	196 11
" bridge tolls	118 01	
" telegraph	5 88	4 24
" sleeping car	56 73	40 92
	$7,714 92	$4,289 47

Expenses of northwestern and western divisions of the La Crosse and Milwaukee railroad for month ending March 31, 1860.

For road and bridge repairs	1,962 74
" station service	1,558 80
" proportion of operating expenses	5,110 87
" use of locomotives	644 45
" " " cars	1,448 58
	$10,725 44

C.

Expenses of northwestern and western division of the La Crosse and Milwaukee railroad for month ending April 30, 1860.

318	For station service	2,118 69
	" road and bridge repairs	2,580 50

For building repairs	208 19
" proportion of operating expenses	5, 583 37
" use of locomotives	656 50
" " " cars	1, 905 70
" am't paid for right of way	2, 480 75
" pro. of drawback on wheat transported for I. Jackson & Co.	294 44
	$15, 828 14

C.

Statement of gross earnings of northwestern and western divisions of the La Crosse and Mil. railroad for month ending April 30, 1860.

	Northwestern.	Western.
For freight	4, 884 51	2, 879 55
" passengers	5, 039 78	3, 259 62
" express service	271 75	196 02
" telegraph service	6 10	4 49
" sleeping car	14 94	10 78
" mis. earnings	2 74	1 98
" bridge tolls	64 07	
	$10, 284 69	$6, 352 15

319

D.

Statement of amount charged for use of locomotives and cars on northwestern and western divisions of the La Crosse and Milwaukee railroad from August 1, 1858, to Feb. 29, 1860.

For use of locomotives	14, 962 40
" " " cars	22, 151 50
	37, 113 90

DISTRICT OF WISCONSIN, *ss:*

I certify that the foregoing depositions were taken by consent at the several dates and in presence of the counsel named in the caption thereto, and that the several papers there attached are the same referred to in the said depositions; that the said witnesses were first by me duly sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled cause, and that their answers so taken on oath were by me reduced to writing, and then carefully read over to the witnesses respectively, and by each subscribed in my presence.

Witness my hand this fourth day of February, A. D. 1861.

WINFIELD SMITH, *Commissioner.*

320 U. S. dist. court, dist. of Wisconsin.

GREEN C. BRONSON, JAMES T. SOUTER, AND SHEPHERD KNAPP, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, SELAH Chamberlain *et al's.*
} In equity.

Deposition of James B. Cross, a witness produced and examined on the part of the defendant, Selah Chamberlain, who being first duly sworn, answered and said:

I purchased a judgment recovered by Newcomb Cleveland against the La

Crosse and Milwaukee Railroad Company, the principal amount of which was about one hundred and eleven thousand dollars. I made the purchase about the 2d of March, 1859. The defendant, Selah Chamberlan, is the equitable owner of that judgment. I hold it as collateral surety for obligations which I hold against him. The judgment referred to was rendered in the United States district court for the district of Wisconsin on or about the 3d of October, 1857.

J. B. CROSS.

DISTRICT OF WISCONSIN, *ss:*

I certify that the foregoing deposition was taken by consent of the
321 counsel for the parties, on the 8th day of January, 1861, at the office of Cary & Pratt, solicitors for the complainants, in the city of Milwaukee in said district, Mr. Emmons, of counsel for defendant Chamberlain, appearing for him, and Mr. Cary, of counsel for the compainants, appearing in their behalf; that said witness was first duly sworn by me, as a commissioner in and for said district court, to tell the truth, the whole truth, and nothing but the truth, so far as he should be interrogated in said cause; that his deposition so taken on oath was reduced to writing by me, and after being first carefully read over to said witness was by him subscribed in my presence.

WALTER S. CARTER,
U. S. Com'r, Dist. of Wis.

322 The district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTER, AND SHEPHERD KNAPP
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, SELAH Chamberlain, and others.

It is hereby stipulated and agreed between the complainants, by their solicitors, and the defendant Selah Chamberlain that the originals of the several instruments, copies of which are hereunto annexed, are to be treated as proven on the part of the said defendant Chamberlain, and that such copies may be read in evidence on the hearing, the same as the originals might were they produced and proven before a master or on a reference or a commissioner for that purpose, viz: An instrument of lease or mortgage, executed by the La Crosse and Milwaukee Railroad Company to said Chamlain, bearing date the twenty-sixth day of September, 1857, copy of which is annexed and marked A. Also a contract between same parties, bearing same date, copy of which is annexed and marked B. Also a contract or agreement between same parties, bearing date the eighth day of December, 1857, copy of which is annexed and marked C. Also report of Sill & Woodward, referees, made in pursuance of said last-mentioned agreement, and copy of which is annexed and marked D. Also an instrument of
323 assignment from Newcomb Cleveland to James B. Cross, bearing date the second day of March, 1859, copy of which is annexed and marked E. And it is further admitted and agreed that the judgments referred to, and assigned by the original of said paper E, remains and is of record in the district court of the United States for the district of Wisconsin.

It is further admitted and agreed that on the second day of October, 1857, a judgment was rendered in the said district court, and where the same now remains and is of record, in favor of the said Chamberlain and against the La Crosse and Milwaukee Railroad Company, for the sum of six hundred and

twenty-nine thousand eighty-nine dollars and seventy-two cents besides costs; and the production of copies or exemplification of the records of either of the judgments above referred to is waived, unless said Chamberlain may see fit, which he may do at the hearing. The said Chamberlain will produce, on request of complainants, the originals of the documents and papers herein referred to.

Dated Milwaukee, January 7th, 1861.

EMMONS, VAN DYKE & HAMILTON,
Sol'rs for Def't.

SELAH CHAMBERLAIN.
CARY & PRATT, *Sol'rs for Compl'ts.*

324 "A"

The La Crosse and Milwaukee Railroad Company to Selah Chamberlain.

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, party of the second part, at the city of Milwaukee and State of Wisconsin, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

The said party of the first part, in consideration of the undertakings and agreements of the said party of the second part hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property of every name, kind, and description in the State of Wisconsin, except all such personal property as is used in and is appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto so soon as the same can be conveniently done.

And the said party of the first part, in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances, and franchises connected therewith or belonging or incident thereto, subject only to such prior and superior liens as may or do exist thereon, and all existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part shall, from and after the said thirtieth day of September, and until this agreement shall be terminated in the manner hereinafter provided, operate so much of the said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operation, in such manner as will produce the largest amount of nett receipts. That the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair, and that the said party of the second part shall receive and appropriate in the manner
325 hereinafter provided all the receipts or income to be derived from the operation of said railroad.

It is further mutually agreed that the said party of the second part may, if it shall be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment of the same.

The said party of the second part hereby undertakes and agrees that he will defray all the current cost and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the costs and expenses of operating the said railroad, and that he will, by the fifteenth day of every month, make out and deliver to said party of the first part a correct statement exhibiting the total receipts and income of said railroad from all sources during the next preceding month; also the cost and expenses during such month of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expense of operating said railroad, and also exhibiting the nett receipts from said railroad, after deducting such cost and expense of rolling stock and repairs and of operating, and that he will at any time, on demand of said company, or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed; and any officer or agent of said company, authorised by said company to do so, shall at any time have the right to examine the accounts of said party of the second part, relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes and agrees that the said nett receipts, after deducting the costs and expenses of repairs and operating as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

1. To the payment of all coupons hereafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 13th, A. D. 1854, together with the sinking fund provided for by a supplemental mortgage or deed of trust, bearing date February 18, 1856, except such of said coupons as are payable November 1st, 1857, and the sinking fund of twelve thousand dollars, payable November 1, 1857.

2. To the payment of all coupons hereafter to become due on one hundred and fourteen thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, secured by a second mortgage or deed of trust, on a part of said railroad, which mortgage or deed of trust bears date on the first day of September, A. D. 1853.

3. To the payment of all coupons hereafter to become due on two hundred thousand dollars of bonds of the city of Milwaukee, issued to the La
326 Crosse and Milwaukee Railroad Company, secured by a second mortgage or deed of trust, on a part of said railroad, which mortgage or deed of trust bears date the thirtieth day of July, A. D. 1854.

4. To the payment of all coupons hereafter to become due on one million of dollars of the bonds of the said railroad company, secured by mortgage or deed of trust on the railroad of said company from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857.

5. Whatever balance of said nett receipts, as aforesaid, shall remain after the payment of the said coupons and sinking fund, shall be applied by said party of the second part, in payment of the amount due, or hereafter to become due, to him by virtue, either of a certain contract between said parties, dated January twentieth, 1857, a supplemental contract between said parties, dated April 30th, 1857, or a certain contract between said parties

dated November 20th, 1856, or of a contract modifying said contract, entered into between the said parties simultaneously with this contract, except such as may become due for work which shall hereafter be done, between New Lisbon and La Crosse, which is to be paid for from the means of the said company other than the said income.

And the said party of the second part further undertakes and agrees that whenever he shall have received from the earnings of the said railroad such sum as, by the terms and conditions of the aforesaid contract for the construction of the said railroad, bearing date respectively November 20th, 1856, January 20th, 1857, April 30th, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive, according to the terms and conditions of the said contract, that he will surrender up to the said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description, connected therewith, or appertaining thereto, in good repair, together with all estate, rights, privileges, franchises, and appurtenances connected therewith, or belonging or incidental thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and all rolling stock and other personal property, put upon said road by said party of the second part, by virtue of this contract, and that he will reconvey and deliver to said party of the first part all personal property hereby conveyed which shall not have been worn out, destroyed, or consumed in the construction or operation of the said railroad, and that he will convey and deliver to said party of the first part all personal property which shall have been acquired for said railroad, in pursuance of this contract, or with the means derived from the receipts from said railroad, and that he will at such time deliver
327 on the line of said railroad, to said party of the first part, fifteen thousand cords of wood, and that whenever the said party of the second part shall have received as aforesaid such sum as he shall be entitled to, as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

In witness whereof, the said party of the first part hath caused the sepresents to be signed by its president and secretary, and its corporate seal to be hereunto affixed, and the same are signed by the said party of the second part.

(Signed) La Crosse and Milwaukee Railroad Company, by—
BYRON KILBOURN, *President.*
[L. S.] JACKSON HADLEY, *Secretary.*
S. CHAMBERLAIN. [L. S.]

Signed, sealed, and delivered in the presence of—
H. L. PALMER.
THOMAS W. BEAVER.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Be it remembered, that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who, being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of said company, and was affixed

thereto by their authority; that he, as president, and Jackson Hadley, as secretary, subscribed their names thereto by like authority. And on the same day before me personally appeared Selah Chamberlain, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,
Notary Public, Milwaukee County.

328 Inventory of rolling stock, machinery, furniture, supplies, and other property owned by the La Crosse & Milwaukee Railroad Company, September 30th, 1857, referred to in the lease hereto attached.

Twenty-three locomotives, numbered from one to 21, inclusive, and Nos. 29 and 30, No. 4 now being rebuilt, 13 first-class passenger cars, 2 second do., three baggage cars, two mail and express cars, 197 house freight
329 cars, 120 platform cars, 30 dumping cars, 25 hand cars, three rubber cars, two snow plows and fixtures.

Machinery:

One stationary engine, boiler, fly-wheel, &c., engine lathe, 2 heads and counters, do., 1 do., hand lathe for brass work, driving-wheel lathe, engine lathe and counter screw gear, bolt cutter and counter, do. taps and dies, planing machine and counter, vertical drill and counter, boiler punch and shears, cylinder boring machine, one wheel press, Holly's rotary pump, McGowan's force pump, portable forge, four parallel vices, six solid box vices,
330 one hanging drill and counter, scroll sawing machine, one boring machine, large splitting sawing machine, small do. tenon sawing machine, wood planing machine, do. turning machine, do. lathe, Gear's irregular cutter, 17 hand screws, 4 15-inch screw wrenches, 1 21 do., 1 12 do., 10 boring machine augers, 5 whip saws, 5 doz. clamps, 2 Bruce cocket wrenches, 23 turning chisels, 3 hammers, 43 quarter augers, 1 sledge, 3 vices, 2 pairs jacks, 2 do.

Machine-shop tools:

370 iron tools, 701¼ do., 11 15-inch saw wrenches, 2 21 do., 5 12
331 do., 23 hammers, 1 spirit level, 1 steel square, 205 caststeel tools, 325 lbs., one lateral jack, pr. do., pr. small do., pr. wr't-iron pulley blocks, 10-in. skein, one pr. wr't-iron pulley blocks 8-in. skein, do. 10-in. do., two set tackle blocks and ropes, do. large tackle and 1 small block, do. saddles punches, do. sets stocks and dies, one butcher saw.

Blacksmith shop:

9 callipers, 24 sledges, 334 lbs.; 14 hammers, 38 lbs.; 85 chisels, 297 lb.; 220 prs. tongs, 1,524 lb.; 220 sledges, iron and steel, 380 lb.; do. steel sledges, 500 lb.; 68 punches, 136 lb.; 46 sets, 230 lb.; 136 mandrils, 544 lb.;
332 27 forge tools, 108 lb.; heading tools, 160 lb.; caststeel dies, 50 lb.; 11 anvils, surface blocks, 1,016 lb.; swedge do., 305 lb.; 2 ft. iron mandril, 123 lb.; one solid box vice, do Sampson do., do. bolt machine, do. Bruce former and bench; do. spring former, do, crane and counter balance, do. crane, do. crane tools, 300 lb.; 4 bellows, one fan-blower and fixtures, do. patent rail anvil, two spring clamps, nine squares, one screw wrench.

Copper shop:

Stovepipe-forming machine, large burning machine, No. 3 beak thin stake, No. 2 stovepipe do., blowhorn do., No. 2 hatchet do., creas-
333 ing do., boiler do., candle-mould do., needle-case stake, large (unfinished) do., small do., one raising hammer, do. pr. No. 0 shears, do. do.

No. 1 grooving machine, 20-inch extra large tin folder, rivet set and header, one pr. shears, 2 do. dividers, 2 do. plyers, wiring machine, small turning machine, burning machine, butcher saw, 4 hollow punches, 1 pr. No. 7 snips, 2 mallets, 3 hammers, one Bright head, do. do do., 75 lb. iron mandrils, 1 wire gauge, beading machine and rollers, one setting-down machine, one square stake, do. burnishing tool, two caststeel chisels, one flue gage,
334 two bevel sets, two soldering cappers, one coffee mill, do. patent balance, do. solid box vice, 262.93; do. bellows, do. coal stove and pipe, do. fire pot, two water pails, one tool sack, three melting ladles.

Car shop furniture:

17 work benches, 16 water pails, 27 saw benches, 12 car horses, 4 long horses, 1 water pot, 2 glue pots, 2 ladles, 2 ash kettles, 2 oil cans, 14 lamps, 15 slates, one Fairbanks' scales, four bolt boxes, four nail, washer,
335 screw, and glue boxes; one cupboard, do. do., 4 stoves and pipe, two wheelbarrows.

Office:

One oak desk, one oak table, one double case walnut desk, four office chairs, one case pigeon holes, do. letter copying press, 3 inkstands, 2 penracks, 2 paper weights, 2 letter clips, one stove and pipe, do. monthly calendar, do. post office box, one paint mill, (paint shop,) do. paint stove and mortar, do. furnace, brass kettle, three stoves and pipe, 4 horses and two plank, one table, one desk and cupboard, do. case of paint drawers,
336 do large can, do. doz. paint cups, 18 quart pails, 8 cans, 3 measures, 6 varnish brushes, 11 paint brushes, 12 sable pencils, 10 doz. striping and lining pencils, 1 gloss brush and tip, 1 artist's spatula, 1 painter's duster, 1 patent scale, 4 sash tools.

Blacksmith's shop:

One desk, 8 cupboards, 2 sprinkling pots, 14 water pails, one scale, two coal stoves and pipe.

Machine shop and bound house:

10 cupboards, 21 tool boxes, 3 water pails, 1 sprinkling pot, 1 portable rack, 6 shovels, 3 large stoves, 1 do. ring coal stove, 3 heavy six-plate stoves 5 drums, elbows and pipe, one scale.

337 Furniture at lower shop and pass storehouse.

3 stoves and pipe, 50 feet rope, 2 jack screws, 2 wheelbarrows, one whip and one crosscut saw, 3 desks, 6 work benches, 12 sawhorses, 2 large oil cans, one stove drum and pipe, 3 ash pails, stock and supplies.

Car shop:

10,328 feet pine, 32,137 do. oak, 10,082 do. ash, 7,500 do. cherry, 800 do. walnut, 7,272 do. maple, rubber spring, 1,000 lb.; iron castings, 32,380 lb.; brass boxes, 1,410 lb.; assorted bolts, 982 lb.; wrought-iron work, 8,000
338 lb.; 2 draft irons, 32 gross assorted screws, 3 gross brass screws, 12 do. r'd head do., 4 do. brass cap do., 1,000 lb. coach screws, 3½ kegs wrought nails, 2 do. do., 46 paper brads, 190 do. tacks, 21 assorted chest locks, 12 brass padlocks, 23 iron do., 3 doz. assorted butts, 4 kegs cut nails, 20 strap hinges, 100 carriage bolts, 1,109 coach screws, 8 notice plates, 4 ventilator rings, 1½ doz car rim locks, 1½ do. mineral knobs, 1 gross patent buttons, 4 do. upholsterer's do., 6 brass car-seat arms, 132 yds. 106-in. car roofing duck, 164 do. 103 do. do. do.

Machine shop :

17,881 lb. iron casting, 1,330 lb. brass casting, 8,892 lb. loco-
339 motive spring; refined iron, 13,289 lb.; American do., 10,534 lb.; cast steel, 194 lb.; spring steel, 6,136 lb.; band iron, 2,550 lb.; angle iron, 400 lb.; boiler iron, 4,055 lb.; flat iron, 600 lb.; nuts, 1,700 lb.; Blossburg coal, 7 tons; charcoal, 600 bushels.

Copper shop :

2 boxes x x x 14 x 20 tin plate; 1½ do. 1 x 10 x 1 4 do.; 8 lb. solder, 11 lb. Babbitt metal, 45 lb. hardening, 133 lb pig tin, 34 lb. *antrormind*, 7 lb. spelter solder, 5 lb. brass, 34 lb. stem brass, 376 lb. brasier's copper; 9 lb. brass and copper wire, 134 lb. iron wire, 128 Russia iron, 21 papers rivets, 11 oil-can bottoms, 6 lb.

340 Paint shop :

612 lb. white lead, 106 lb. whiting, 27 lb. lampblack, 82 lb. venetian red, 132 lb. litharge, 200 lb. red lead, 851 lb. stone paint, 300 lb. ochre, 8 lb. lake, 3 lb sugar of lead, 4 lb. scenna, 3 lb. umber, 6 lb. India red, 6 lb. Am vermillion, 68 gals. turpentine, 16 do. japan, 20 gals. English varnish, 36 do. coach-body do., 2 do. furniture do., 203 do. linseed oil, 4 boxes chrome green. 6 do. do yellow, 13 lb. English vermillion, 1 lb. ultramarine blue, 1 lb. Chinese blue, 7 books gold leaf, 5 lb. pumice stone, assorted lot of glass.

341 Stock and supplies :

381,334 feet pine lumber, 36,972 do. fencing; 58 stock timber, 1,306 cu. feet; 10 do. do., 210 do.; 228 joists, 7,156 feet; 11 sticks oak timber, 242 cu. feet; 4,700 feet boards, 1,500 do. flooring, 1,000 do. black walnut, 600 do. plank, 2,450 do. sheathing, 560 do. battens, 4,960 do. 2-in. plank, 600 do. 2-in. flooring, 1,600 do. lath, 3,000 do. staves, 500 do. dressed lumber, 2 6-feet door frames, 4 6-feet batten doors, 20 window and door frames, 10 do.
do. do., 2 pannel doors, 27 kegs nails, 50 feet hose, 3 McGowen's
342 force pump, 3 Grimshaw's do. do., 4 bunches hoop wire, 500 iron rods, 60 feet lead pipe, 25 yards team chain, 40 mile posts, 12 ring posts, 8 24-in. low truck wheels, 1 27-in. do. do. do., 3 28 in. do. do. do., 55 30-in. do. do. do., 117 33-in. car wheels, 29 hand car wheels, 9¾ sets car wheels and axles, fitted, 2½ sets low truck do. do.; 47 lever pins, 34,820; 56 car axles, 16,681; 17 do., 5,270; 3 switch colmers and targets, 2 pairs car trucks, 3½ set do. do., (1 iron frame,) 4 wheels and axles, (1 form No. 4,) 517 lb. curled hair, 650 lb. cop. waste, 328 lbs. tallow, 16 lb. hemp packing, 116 lb. rubber do., 69 feet 6-in. rubber hose, 59 do. 2½ do., 24 lb. emery
343 flour, 425 hand lanterns; 7½ boxes car candles, 300 lbs.; 12 station lamps, 12 axes, 20 picks, handled, 2 doz. shovels, 2 spike mauls, 15 pick handles, 6 axe do., 1 doz. pails, 1 do. brooms, 11 adzes, (handled,) 7 large cast frogs, 1 ironed; 6 small do. do., 8 spring frogs, 827 lb. 3-8 rivets, 582, lb. 3-8 do, 80 feet wire cloth.

Assorted bill of files :

20 low flues, 2 in. diam., 418 lb.; 1 do. gong.

Car, loco., machinery, and other patterns :

6 10-12 doz. chimney glasses, 15 front glasses, 7 21-in. screw wrenches 2 12 do. do., 2 15 do. do.

344 Milwaukee station :

6 writing desks, 5 chairs, 3 stools, 1 clock, 1 letter or copy book, 8 inkstands, 158 vols. books, 5 stoves with pipes, 2 zinc brands, 23 trucks,

3 crowbars, 2 long ropes, 18 oak rollers, 1 small platform scale, (Fairbank's,) 4 large do. do. do., 1 do. do. do., Gasten's.

General office:

24 forwarding books, 7 do. do. for press, 2 receiving books, 18 duplicate do., 10 daily cash do., 7 collection do., 19 receipt books, in freight; 3
345 do. do. out do.; 48 tally do., 8 indexes do. 3 small ledgers, 3 do journals, 1 invoice book, 7 record books, 9 wood receipt do., 300 freight tariff, 50 do. on tissue paper, 54¾ r'ms blanks, (way-bill, bill-heads, and pay-rolls,) 12 r'ms cream-laid quarto post letter, 8½ do. wove post satin ruled, 14 do. damask note, (in ½ r'ms,) 13 do. do. card do., 6 do. commercial note, 1 do. foolscap, 2 do. bill paper, 3 do. headed letter, 28 boxes note envelopes, white; 85 do. common-sized letter, No. 2621; 46 do. No. 9 do.; 15 do., No. 11 do.; 2 No. 8 do.; 2 doz. academic inkstands, 1½ do. mechanic do., 8 glass do. do., ¾ lb. sealing wax, 6 gross steel pens, 6 doz. com. lead pencils, 9
346 do. Faber do., No. 1, 2 do. do. do., No. 2, 5½ gro. ivory-tipped, No. 2, 5¾ do. penholders, 9 two-feet post office boxes, 3 three do. do., 1 doz. balls cotton twine, ¼ doz. hemp twine, 7¾ do. twine books, 19 paper clips, 1¾lb. I. rubber, 12 erasers, 8 paper pins, 12 mucilage, 18 penracks, 2¾ doz. iron paper weights, 21 Japan paper folders, 1¾ doz. bottles red ink, 5 10-12 do. black do., ½ do. gum arabic, 3 lb. wafers, 10 brushes for wafers, 2 counter brushes, 16 sheets oil paper, 10 flat rules, 2 oak counting-house desks, 1 high single black walnut do., 1 oak table, 1 sofa, 1 carpet on floor.
347 1 stove and pipe, 10 cane-seat arm chairs, 4 high seat do., 1 mahogany desk, (McCulloch,) 1 double black walnut do., 1 oak counter and drawers for tickets, 1 black walnut desk, 1 mahogany desk and small bookcase, 2 open case pigeon holes, black walnut; 2 large close ditto, tickets; 3 letter and way bill presses, 2 iron safes on platform, 1 small iron safe in ticket room, 1 painted counters and drawers, 1 washstand, 1 sofa in passenger room, 1 long cushioned seat in do., 2 stoves and pipe in do., 1 looking glass in do., 1 clock in ticket office, 1 table in do. do., 6 Windsor chairs, 2 japan water cans, 4 plated candlesticks, 1 glass dish, 1 stove and pipe in main office, 3 bookrests, 1 large map of Wisconsin, 2 Chapman's ditto.

348 Richfield station:

One desk, one scale and weights, one table, two benches, one bedstead, one matrass, one tenck, four chairs, one saw, one axe, three stoves and pipe, one pail, one station lamp, two small lamps, one lantern, one shovel, one marking-pot and brush.

Schleisingerville station:

One large platform scale, one stove and pipe, one bookcase, one desk, one truck, one large lantern, 1 small lantern, two oil lamps, 1 punch-bar, 1 oil-can, 1 pail, several inkstands and bottles, 3 forwarding book, 1 duplicate do., 2 cash do., 1 ticket do., 3 old blank do., 1 folder, 7 keys, 3 chairs, 1 receiving book, 2 index do., 2 receipt do., 3 new blank do., blank sheets.

Hartford station:

1 desk, 1 desk stool, 2 glass lamps, 2 tin lamps, 3 lanterns, 1 large lantern, 3 stoves and pipe, 1 parallel ruler, 3 brushes, 1 oil-can, 1 lamp-filler, 1 water-pail, 1 p'r trucks, 1 p'r scales, 1 axe, 1 beetle, 4 wedges, 1 inkstand.

Rubicon station:

1 stove and pipe, 1 pair trucks, 1 p'r scales, 1 b'dle check line.

349 Iron Ridge station:

1 desk, 2 receiving books, 1 for'd book, 1 cash book, 1 daily cash book, 1 check do., 2 index do., 2 dup. receipt do., 4½ qr. blanks, way-bills, 2 23-24 qrs. return blanks, 4 qrs. note paper, 1 qr. foolscap, 40 printed blanks letters, 6 monthly balance-sheets, 20 weekly returns, 16 monthly returns sheets, 5 pack note envelopes, 2 pack large envelopes, 5 monthly statistical sheets, 1 box steel pens, ½ doz. pencils, 1 penrack, 1 ink bottle, 1 inkstand, 1 rubber, 1 paper-cutter, 1 paper clip, 2 sheets b. paper, 1 stove, 8 joints pipe, 2 elbows, 5 chairs, 1 globe lamp, 13 square do., 1 small lamp, 1 oil-can, 1 lamp-filler, 1 shovel, 1 pick, 2 trucks, 1 wheelbarrow, 1 p'r scales, 1 for flat bar, 1 water-pail and cup, 1 buck saw.

Horicon station:

3 stoves and pipe, 1 axe, 1 truck, 1 sett scales, 1 large desk, 1 ticket desk, 2 wooden pails, 1 large lantern, 2 small do., 1 oil-can, 4 chairs, 1 bunch, 1 broom, 1 inkstand, 1 rule, 1 tin paper-cutter, 1 bottle ink.

Junction station:

2 hand trucks, 2 for flat bars, 1 set platform scale, 1 arm-chair, 2
350 receipt books, new, one blank book do., 2 freight and one check book, new.

Rolling Prairie station:

1 black-walnut desk, 1 old shovel, 1 inkstand, 1 old axe, 1 oil-can, 1 rule, 2 trucks, 1 sett Fairbanks scales, 1 japan lamp, 2 globe lamps, 4 chairs, 1 turpentine can, 1 lamp-filler, 2 second-hand stoves.

Beaver Dam station:

1 mag. sofa, 1 carpet, 1 table, 1 settee and 9 chairs, 1 desk stool, 2 office desks, 1 ticket desk, 1 letter-press stand, 1 washstand, 4 stoves, 2 p'r trucks, 1 sett Fairbanks scales, large, 1 water-cooler, 3 hand lanterns, 1 sta. lamp, 1 oil-can, 1 fluid can, 2 glass lamps, 1 ticket stamp, 1 rule, 3 paper folders, 1 p'r shears, 2 inkstands, 1 letter box, 100 blank for'd receipts, 92 weekly f't blanks, 100 blank rec'd receipts, 12 weekly t'k't blanks, 25 blanks for overcharges, 12 monthly blanks, 25 blanks and sheets, 6 statistical blanks, 25 blanks for money sent fr., 200 hf. sheets way-bills, 100 qt. sheets way-bills, 1 hf. rm. letter paper, 1 hf. commercial paper, 200 envelopes.

Fox Lake station:

3 hand trucks, 1 p'r scales, 2 writing-desks, 1 ticket draw, 1 sett of books for freight and tickets, 2 inkstands, ruler, hf. box pens, blanks and
351 stationery, 2 large box stoves, 1 parlor stove, 1 large lantern, 1 small do., 1 fluid side lamp, 1 oil-can and lamp-filler, 1 water-pail, 1 broom, 1 settee and cushion, 1 high stove, 4 chairs, 7 joints Russia pipe, 2 elbows, 16 joints and 4 elbows com. pipe.

Cambria station:

One desk, one desk top, one ticket drawer, one desk, one stool, twelve chairs, two stoves and pipe, one w. truck, one p'r scales, two lamps, two lanterns, one head light, ½ gall. oil, one broom, one axe, one ash pan and fixtures, one marking-pot and brushes, one paper-cutter, two clips, one paper weight, two inkstands, one bottle ink, one penstand, one bottle gum, two pencils, two penholders, one box pens, one ruler, 150 bill-heads, 100 blank w. bills, 300 blanks, 100 large envelopes, 150 small envelopes.

Midland station:

1,017 sheets sundry blanks, 8 qrs. note paper, 5 qrs. foolscap, 75 small

envelopes, 100 medium do., 100 large, 1 box wafers, 2 inkstands, 1 bottle red ink, 1 hf. box steel pens, 1 rule, one penrack, one tin folder, one desk, one table, one sofa, one collection books, one freight forw'd'g book, one daily cash book, one freight rec'd'g do., one out freight receipt book, one
352 delivery book, one check book, one ticket account book, one ticket drawer, one stovepipe, zinc, &c., office, one stovepipe, &c., pass. room, one settee for pass. room, one bench, pass. room, 3 chairs do., 3 oil lamps, one side lamp for pass. room, one side lamp, platform, two globe lanterns, two trucks, one sett scales, two , two water-pails, one dipper, one broom, two bridges for unloading cars, two stoves and pipe, engine-house, one stove and do. tank.

Portage City station:

Four office desks, six chairs, five tables, two stands, four inkstands, lot blanks and old books, two iron safes, one ticket case, one ticket stamp, one large, nine chairs, four parlor stoves and pipe, three bedsteads, three bedcords, two mattrasses, lot stovepipe, one small shovel and tongs, one scale and weights, 3 trunks, 1 hammer, 2 ash pans, 1 iron bar, 2 wood boxes, 4 window curtains, 1 oil-can, 2 oil fillers, 1 sitting-room carpet, one gall. measure, one tunnell, four glass lamps, five hand lamps, two outside hanging lamps, one side lamp, one turpentine jug, one marking-pot and brush, ⅔ barrel oil.

Kilbourn City station:

One lounge, one table, 12 flag-bottom chairs, one carpet, one looking-glass, one letter book, three paper-cutters, one letter press and stand, two
353 bottles ink, four table lamps, four office chairs, two office do., one desk, ½ box steel pens, one office table, one doz. penholders, four inkstands, one ½ doz. pencils, two penracks, two lanterns, three paper-holders, one train lamp, three paper weights, one can 4 galls. oil, one lamp-filler, three japan lamps, one shovel, one axe, two water-pails, two platform scales, three freight-house trucks, one can 2 q'ts turpentine, one marking-pot and brush, one broom, one bedstead, two mattrasses, 129 ins. blank stationery, ¼ M small envelopes, ½ M large do., 7½ q'r com. cap paper, one q'r letter do.

Blacksmith shop, Portage City:

Lot cast-steel tools, lot iron do., one Armitage anvil, one swedge block, draft J. M. Mandril, one p'r R. R jacks, 15 qr. augers, one sampson vice, one string forming machine, one solid box vice, 16 in. bellows, one drilling machine, one steel square, one p'r dividers, one 15-in. screw wrench, one 12-in do., 3,000 lbs. Blossburg coal, 2,000 lbs. ass't iron, 300 lbs. spring steel, one sett car wheels and axles, two stoves, tank house; one stove, tank house, Hartford; one stove, tank house, Horicon; one stove, tank house, Beaver Dam.

354 Articles in room occupied by land com'r:

1 bed and bedding, 1 lounge, 1 washstand, 1 ewer and basin, two pails, 1 table, 1 desk, 1 maprack, 1 portable gas-burner, 1 wood box, 1 stove and zinc, 4 joints and 2 elb's pipe, 6 chairs, 1 carpet, 1 looking-glass, 3 curtains.

Articles in room occupied by treasurer:

1 Badger State safe, 1 stationary desk, 1 looking-glass, 1 State map, 5 chairs, 1 carpet, 1 desk stool, 4 inkstands, 1 p. o. depository, 1 ash pail, sheet iron, 1 p'r scissors, 1 table, 1 stationary fence, 1 stove and zinc, 6 joints 3 elb's pipes, 1 U. S. map, 1 water-cooler, 1 basket, 1 calendar, 2 penracks, 2 spittoons, 1 wooden pail.

Articles in room occupied by vice-prestd:

1 table, 1 desk, 6 chairs, 1 wood box, 1 letter press, 1 stove and zinc, 8 joints and 2 elb. pipe, 1 case-board, 2 frames, Proceedings of Senate and Assembly, 1 map city of La Crosse, 1 map Kilbourn City, 1 portfolio, 1 calendar, 3 inkstands, 1 ruler, 2 curtains, 1 p. o. depository, 1 spittoon,
355 1 map Milwaukee, 1 tin cutter, 1 safe, 1 stove and zinc, 9 joints and 2 elb. pipe, 1 safe, 1 Badger State safe, 2 desks, 1 stationary desk, 1 table, 1 bookcase, 1 paper case, 3 desk stools, 1 letter press, 1 seal corporate, 1 punch, 1 twine cup, 4 chairs, 1 p. o. depository, 1 calendar, 1 cupboard, 1 U. S. letter scale, 5 inkstands, 2 letter folders, tin, 3 rulers, 2 p'r scissors, 1 wood box. [SEAL.]

356 B.

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland, and State of Ohio, party of the second part, witnesseth, that the said parties have mutually undertaken and agreed, and by these presents do undertake and agree, to and with each other, that the contract heretofore entered into between the said parties, for the construction of the western division of the La Crosse and Milwaukee railroad from Portage City to La Crosse, excepting the bridge across the Wisconsin River at Kilbourn City, and which contract bears date the 20th day of January, A. D. 1857, and the supplemental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be, and the same are hereby, modified as follows, to wit:

The said party of the second part shall proceed to complete the construction of said railroad, as far as the depot at New Lisbon, in the county of Juneau, with reasonable dispatch, and by the first day of December next.

The time for completing the said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the said railroad between the two last-named points as fast and no faster than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same in cash, or monthly estimates, according to the terms and stipulations of the aforesaid contract.

The contract entered into by and between said parties on the 20th day of November, A. D. 1856, for the ballasting that portion of the La Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said work, but that the motive power so used shall be a part of that specified in a contract between said parties entered into simultaneously with this contract for the leasing of said road, and that said party of the second part shall for all ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by the order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of constructing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension and by loss, as teams, materials, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due to him, and the amount to become due to

him for finishing said railroad to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further consideration of the services, risks, and personal expenses of
357 the said party of the second part in the operation and management of said railroad as hereinafter referred to, and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay to the said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid consideration.

It is further stipulated and agreed, that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amounts due to the said party of the second part, on the 30th day of September, 1857, under and by virtue of the said contract of January 20th 1857, April 30th, 1857, and November 20th, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars ($200,000,) shall be the balance due to the said party of the second part, on the 1st day of October, 1857, and shall be charged by said party of the second part to the said party of the first part, and on the first day of every month thereafter the said party of the second part shall charge the said party of the first part with the amount which shall be due, under or by virtue of either of said contracts, or this contract, in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part, with such sum as the said party of the first part shall be entitled to receive from the net earnings of the said railroad, by virtue of the said contract of lease entered into between said parties, simultaneously with these presents.

It is further agreed between the said parties, that on the 1st day of July, 1858, and on the first day of each July and each January thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making out such accounts, at the rate of twelve per cent. per annum.

It is further agreed between the said parties, whatever sums shall hereafter become due to said party of the second part, for any work done on the construction of said railroad, between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company, derived from other sources than the income of said railroad.

In witness whereof, the said party of the first part has caused these presents to be signed by its president and secretary, and the corporate seal of said company to be affixed thereto, and the said party of the second part has affixed his signature and seal the day and year first above written.

(Signed)

La Crosse and Milwaukee Railroad Company, by

[L. S.]

BYRON KILBOURN, *President.*
JACKSON HADLEY, *Secretary.*
S. CHAMBERLAIN. [L. S.]

C.

358 Memorandum of agreement, made the eighth day of December, in the year eighteen hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company of the one part, and Selah Chamberlain of the other part, witnesseth:

Whereas, on or about the second day of October last past, the said Selah Chamberlain obtained and perfected in the district court of the United States for the district of Wisconsin a judgment against the said railroad company

for the sum of six hundred and twenty-nine thousand one hundred and five dollars, or thereabouts, which judgment was obtained and perfected upon a promissory note, a warrant of attorney for confessions of judgments accompanying the same, executed by said company to said Chamberlain; and whereas the consideration of said judgment was the alleged balance due from said company on the first day of October last to said Chamberlain, for work, labor, and materials furnished by him, and to and for said company, under certain contracts for ballasting, repairing, and constructing
359 different divisions of said railroad, and for extra work, labor, and materials by him furnished, done, and performed in and about the work and services contemplated in said contracts; and whereas since said judgment was confessed and entered up as aforesaid, a new board of directors of said company has been elected and new executive officers appointed, and since which time also some of the creditors of said company have uttered complaints and charged that said judgment was in whole or in part without consideration, and legal proceedings have been commenced by creditors other than said Chamberlain, wherein it is sought to impeach said judgment for fraud and collusion, and as having been created without consideration in whole or in part; and whereas some of the individuals comprising said new board of directors and executive officers are ignorant of the state of accounts between said Chamberlain and said company on said first day of October, and of the facts whether said sum was in reality and in truth due to him at that date: Now, therefore, in consideration of the premises, the said Selah Chamberlain has agreed, and does hereby agree, to enter into a new accounting with the said railroad company with a view of ascertaining the real and true amount due said Chamberlain on the said first day of October, and to which and the said company may, if the directors see fit, cause the entire work claimed for by said Chamberlain to be
360 re-estimated by or under the direction of the present chief engineer of said company, and such other competent and disinterested engineer as the parties hereto may agree upon; such new accounting, and all necessary to be done to accomplish the same, shall be had and done within six months from the date hereof, or these presents to stand void and of no effect whatever.

This agreement is not intended to effect and shall not in the least modify or effect any contracts or agreements heretofore entered into or made between said Chamberlain and said company, but on the contrary this agreement is entered into with the sole object and intent of ascertaining the amount due the said Chamberlain as foresaid on said first day of October for work, labor, services, and materials.

If upon such new accounting, upon the basis aforesaid, it shall be ascertained that less than the sum expressed in such judgment was due to said Chamberlain as aforesaid, the said judgment shall be reduced or satisfied to the extent or sum of such excess, such judgment to stand and remain meanwhile, and be in nowise impaired or affected by this agreement otherwise than as the amount due thereon may be effected or determined by the result of such new accounting.

If upon such new accounting, upon the basis aforesaid, it shall be ascertained and determined that more than the sum expressed in such judgment was actually due to said Chamberlain, on said first day of October, the excess shall constitute and be a lawful claim or demand against said
361 company, and shall be allowed to said Chamberlain in future estimates under his contract for the construction of said railroad to La Crosse.

The La Crosse and Milwaukee R. R. Co., by—
STEPHEN CLARK, *President.*
SELAH CHAMBERLAIN.

D.

To the board of directors of the La Crosse and Milwaukee Railroad Co.:

GENTLEMEN: We, the undersigned, having been appointed to make new estimates of the work done up to October 1st, 1857, on the line of your road from Portage City to La Crosse, by Selah Chamberlain, under contract, dated January 20th, 1857, and April 30th, 1857, and also under certain stipulations for ballasting the same, respectfully report that in accordance with a contract made on the 8th of December last for a remeasurement of the work done on that portion of the road, we have carefully examined each of the several items of work performed, aided by the original notes and cross sections of the work, and by such new measurements and examinations as were necessary to correctly estimate their value of the work performed under and in accordance with the stipulations of the above-named contracts, and the following is the result, viz:

362	43 miles main line, as per contract, at $12,000 per mile	516, 000 00
	2 32-100 miles side track	27, 840 00
	Grading, bridging, and masonry, proportionally equal in value to	151, 900 00
	Extras per contract on earth hauled over 500 feet	27, 537 30
	Grubbing and clearing, (proportional,) at $300 per mile	18, 620 00
	Solid rock excavations, 118,557 c. y'ds, at 75c	88, 917 75
	Loose " 2,400 " 50c	1, 200 00
	Roadway, cattle passes, bridges, and changing highway, extra	11, 700 00
	Excavations of foundations and timber in same	6, 500 00
	Bank wall, 3,500 c. y., at $3 per c. y	10, 500 00
	Tunnel approach excavations, 73,957 3-10 c. y., $2 per c. y	147, 914 60
	Pile bridging	2, 500 00
	Tunnel culvert at Kilbourn City	2, 300 00
	Ballasting 45 32-100 miles, at $2, 000 per mile as per stipulation	90, 640 00
	Grading depot grounds at Kilbourn City	973 20
	Damage for detention and change of line at New Lisbon	1, 121 00
	Making total	1, 106, 163 85
	Deduction for work unfinished at that time, but estimated in above, being track-laying, ballasting, and grading	62, 000 00
		1, 044, 163 85

363 Milwaukee, March 25, 1858.

W. R. SILL, *Civil Engineer.*
E. W. WOODWARD, *Chief Engineer.*

E.

This indenture made the second day of March, eighteen hundred and fifty-eight, between Newcomb Cleveland, of Waukegan, in the State of Illinois, of the first part, and James B. Cross, of the city and county of Milwaukee, and State of Wisconsin, of the other part.

Whereas the said Newcomb Cleveland did on the third day of October, in the year eighteen hundred and fifty-seven, recover, by judgment in the district court of the United States for the district of Wisconsin, against the La Crosse and Milwaukee Railroad Company, the sum of one hundred and eleven

thousand seven hundred and twenty-seven dollars and seventy-one cents for his damages, besides costs, taxed in said suit at the sum of five hundred and forty-four dollars and fifteen cents, as by the record thereof now remaining in said court may appear: Now this indenture witnesseth, that for and in consideration of the sum of one hundred and twenty-four thousand and five dollars and forty-nine cents to him, the said Newcomb Cleveland, in hand paid by the said James B. Cross, the receipt whereof is hereby acknowledged, the said Newcomb Cleveland hath granted, bargained, sold, assigned,
364 transferred, and set over unto the said James B. Cross, his executors, administrators, and assigns, the said judgment so recovered as aforesaid against the said La Crosse and Milwaukee Railroad Company, and all the benefit and advantage, sum and sums of money that may be had, obtained, or gotten by reason or means of the said judgment or any proceedings heretofore had and instituted, or to be had thereupon; and the said Newcomb Cleveland does hereby covenant with the said James B. Cross that no part of the said judgement or of the interest or costs thereon has been paid.

And the said Newcomb Cleveland does hereby authorize and empower the said James B. Cross, and his representatives or assigns, in the name of the said Cleveland or otherwise, to demand, sue for, recover, receive, and enjoy, the moneys due and to be due as aforesaid, and for that purpose to avail himself of any proceedings heretofore instituted by said Cleveland or otherwise. But this assignment is made and taken in all other respects a the risk of the said James B. Cross and his assigns, who is to collect the same at his own expense, and not to subject the said Newcomb Cleveland to the payment of any costs or charges whatever.

N. CLEVELAND. [SEAL.]

In presence of—
H. M. FINCH.

365 United States district court, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD Knapp, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edwin R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, Alonzo V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Lauthof, Sebre Howard, Lawrence G. Graham, Donald D. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, George Tracy, Horace Galpen, Edward Livermore, and William Crawshay.

Depositions of witness, taken by consent, before Walter J. Carter, one of the commissioners of said court, at his office, Nos. 10 and 11 Albany Building, in the city of Milwaukee, in said district, on the 1st day of December, 1860. Present: Mr. Cary, of counsel for complainants, and Mr. Brown and Buttrick, for defendants.

366 Edward P. Whaling, a witness produced and examined for the defendants, testified and said: I have been in the employ of the La

Crosse and Milwaukee Railroad Company since October, 1856. Part of the time I have been employed as clerk, and part of the time as secretary. I was secretary, I think, the last eight months I was there. I left the employ of the company in July or August, 1859. I think I commenced being secretary in October, 1858. I am still in the employ of the receiver. With the exception of six weeks or two months, I have been employed in some capacity by the company or receiver from the time I was first employed until the present. While I was secretary of the company I believe the seal of the company was not in the company's office nor in my possession. I cannot tell the last time I saw it. I do not remember the time the seal of the company was taken away from the office of the company, but the date it was so taken away I do not remember. I remember it was taken away. I do not know who took away the seal. There was a meeting of the directors in Milwaukee, 20th July, 1858, and there was no quorum present; and with that exception there was no meeting of the board of directors in Wisconsin from Dec. 1st, 1857, until the 1st of March, 1858, that I recollect of, and I find no record of any on the books.

367 The witness being cross-examined by Mr. Cary, for the complainants, testified and said:

I cannot say whether the records of the meeting of the board of directors of the company are now in Milwaukee or not. There are copies from the records of directors' meetings held in Albany and New York.

Question. Does the book of records of the meetings of directors in the office in Milwaukee contain a record of meeting or any meetings held by the board of directors in any place; and if so, where, between the 1st of December, 1857, and 1st of March, 1858.

(Mr. Brown, for the defendants, objects to the question, because the witness has already stated that those records are mere copies of records, and not original entries of the minutes of the proceedings of those boards.

Answer. It does. The meetings were held at Albany and in New York City.

EDWARD P. WHALING.

Prentis Dow, a witness produced and examined for the defendants, testified and said:

I was at one time transfer agent in New York of the La Crosse and Milwaukee Railroad Company. This was in the summer of 1857; and since that time I have known more or less concerning the matters of the company.

368 No bonds issued by the company commonly called land grant bonds, numbered from number twenty-five hundred and upwards, were ever given to me by Mr. Noxen or any other agent or officer of the company.

I saw five hundred and fifty of the bonds delivered to Mr. Chamberlain in New York City about the 30th of January, 1858. They were numbered from 2,500 to 2,950, and were delivered to Mr. Chamberlain to be deposited in the Albany Exchange Bank; they were delivered to him by Mr. Clark, or in his presence, by one of the directors; they were delivered to be deposited in the Albany Exchange Bank.

Towards the last of February, 1858, I had presented to me for, examination, two of the bonds out of this parcel of five hundred and fifty bonds which had been sold at the board of brokers, as I was informed.

About the 10th of February, 1858, Mr. Livingston, of the firm of Vose, Livingston & Co., came to Albany, where I then was, to make inquiry as to the safe-keeping of the five hundred and fifty bonds, to which I have already alluded. Mr. Lovett, the cashier of the Albany Exchange Bank, stated to me, by way of satisfying Mr. Livingston, that the whole five hundred and

fifty bonds above referred were each and all of them in the vaults of the bank. This was before I saw the two in New York City.

(Mr. Cary objects to so much of the foregoing testimony as relates to what was said by the cashier of the Albany Exchange Bank.)

PRENTIS DOW.

DISTRICT OF WISCONSIN:

369 I certify that the foregoing depositions were taken at the time, place, and in the presence of counsel as therein stated; that the said witnesses were by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, in said cause; that their testimony so taken on oath was by me reduced to writing, and after being read over by said witnesses, was by them subscribed in my presence.

Dated Milwaukee, 1st of Dec., 1860.

WALTER Y. CARTER, *U. S. Com'r of Wis.*

U. S. district court, district of Wisconsin.

GREENE C. BRONSON, SHEPERD KNAPP, AND JAMES T. Soutter
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*
} In equity.

And now comes, this 2nd day of February, A. D. 1861, the above-named complainants, by Cary and Pratt, their solicitors, and J. Albert Helfenstein, one of said defendants, by Butler, Buttrick & Cottrel, his attornies, and consent that the testimony of E. P. Whaling, annexed, be made on the hearing of this cause with the same force and effect as though taken under a regular commission, subject only to objections to its relevancy and competency.

CARY & PRATT, *Compl'ts' Sol'rs.*

370 U. S. district court, district of Wisconsin.

GREENE C. BRONSON, SHEPERD KNAPP, AND JAMES T. Soutter
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*
} In equity.

MILWAUKEE COUNTY, *ss:*

E. P. Whaling, being duly sworn, deposes and says that he was a clerk in the office of the La Crosse and Milwaukee Railroad Co. from October, 1856, until October 12th, 1858, when he was appointed secretary of said company; that he remained such secretary until the 23rd of May, 1859; that during the time he was secretary of said company he had charge of the books thereof; he knows from the books of said company that there was a mortgage executed to J. Albert Helfenstein, trustee, by said company, on the 26th of September, 1857; that from the books of said company it appears that there are now outstanding and uncancelled of the bonds issued under said mortgage, the amount of $367,500; he has no personal knowledge as to whom or when said bonds were disposed of.

EDWARD P. WHALING.

Sworn to before me this 2nd day of February, 1861.

ALFRED L. CARY,
Notary Public, Mil. Co., Wis.

371 United States district court, district of Wisconsin.

GREEN C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, Alonzo V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Lauthoff, Sebre Howard, Lawrence G. Graham, Donald D. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, Guy Tracy, Horace Galpin, Edward Livermore, and William Crawshay.

The deposition of Alfred Noxon, a witness produced and examined for the defendants, by consent, before Walter S. Carter, one of the commissioners of said court, at his office, Nos. 10 and 11 Albany Buildings, in the city of Milwaukee, in said district, on the 16th day of November, 1860.

Friday, Nov. 16th, 1860.—Present: Mr. Cary, of counsel for the
372 complainants, and Mr. James S. Brown, of counsel for the defendants.

By consent the examination of said witness was adjourned until Saturday, Nov. 17th, 1860, at 2 o'clock p. m.

Saturday, Nov. 17th, 1860.—Present: the counsel before mentioned.

Alfred Noxon, a witness produced and examined for the defendants, testified and said:

I was a director of the La Crosse and Milwaukee railroad on the 1st of January, 1858, and for some months subsequently. The contract to complete the road from Tomah to La Crosse was made by Mr. Stephen Clark, the president of the company, with Mr. Selah Chamberlain, on or about January 1st, 1858. I do not know whether the road was insolvent or not in the month of January, 1858. Bonds were left with Bronson and others, trustees, to be countersigned subsequent to the making of this contract. After they were certified I took away a portion of them from the trustees; according to my best recollection I took away some four or five hundred thousand dollars of them; who took away the balance I do not know; the bonds which I took away I delivered to Mr. Clark: I think, I am not sure, I delivered them to Mr. Clark; if I did not deliver them to Mr. Clark, I delivered them to Mr. Dow, or some other officer of the company.

Question. Is it impossible for you now to state to whom you delivered them, if not to Mr. Clark?

Answer. It is.

Question. What numbers were those bonds, as near as you can tell?
373 Answer. They were between Nos. 2500 and 4000.

Question. If you delivered them to anybody, did you do so to an officer of the company?

Answer. All the bonds I delivered were to Stephen Clark or some other officer or agent of the company.

Question. Do you know of any of those fifteen hundred bonds numbered from 2500 up to 4000 having been deposited with the Albany Exchange Bank?

Answer. I do not.

Question. Did you take those bonds from the trustees, or any of them, at one time or at different times?

Answer. At different times.

Question. Did you deliver them all to the same person?

Answer. I cannot say; I think I did; I think I delivered them all to Mr. Clark.

Question. In what month did you so receive and deliver those bonds?

Answer. I think 'twas in February or March, 1858.

Question. Were you ever engaged in selling any of those bonds numbered between 2500 and 4000?

Answer. I was.

Question. How many and between what numbers, as nearly as you can tell?

Answer. I should think I sold between two and three hundred thousand dollars of them, but between what numbers I cannot tell.

Question. Was the number which you so engaged in selling not greater than three hundred thousand dollars?

Answer. I can't say.

374 Question. What is the outside number, which you will mention as having been engaged in selling, beyond which you could not have gone?

Answer. I don't think it could have exceeded five hundred thousand dollars; I think 'twas less than that.

Question. Were they sold in a body or at various times and to various parties?

Answer. They were sold principally through brokers, and I presume at various times and to various parties.

Question. Were any sold by yourself directly?

Answer. I do not recollect of any.

Question. Through what brokers were these bonds sold?

Answer. I think most of them were sold through Meigs & Greenleaf; some through H. P. Morgan; some through Ashley & Norris; and some through A. Fleming.

Question. At what time and for what prices were those sold?

Answer. I think 'twas during the spring and summer months of 1858. The prices, as near as I can recollect, ranged from 25 to 38 cents on the dollar; I cannot state the amount more definitely.

Question. Have you any account with these brokers which enables you to distinguish the times and amounts of these sales?

Answer. I have not; I mean I have nothing but an account of sales from the brokers; I kept no account myself.

Question. Where is that account of sales?

Answer. If it is in existence, it is at New York, and it is so situated that no one can get it but myself.

375 Question. Was this account ever rendered to the company or any of its officers?

Answer. Not to my knowledge.

Question. What disposition was made with the proceeds of the sales of these lands? Were they deposited anywhere, or paid over to some individuals? Please state the circumstances.

Answer. The proceeds of the bonds sold by me were deposited by me in the Albany Exchange Bank to the credit of Selah Chamberlain.

Question. Was this deposit made at one time, or at various times, as the bonds were sold?

Answer. At various times, as the bonds were sold, I think.

Question. About when was the first deposit to the credit of Mr. Chamberlain made?

Answer. I think in the spring of 1858; I cannot tell in what month.

Question. Did you deposit the entire amount of proceeds of sales or a certain sum on each bond sold?

Answer. I deposited the entire amount of proceeds, less commissions of the brokers on sales.

Question. Did you deposit them as being proceeds of sales of certain specific bonds, or did you deposit them as a general deposit to Mr. Chamberlain's credit?

Answer. I deposited them generally to Mr. Chamberlain's credit, without specifying the particular number of the bonds.

Question. From whom did you receive these bonds which you have sold as specified?

376 Answer. I understood them to come from the Albany Exchange Bank.

Question. Did these all come from the Albany Exchange Bank?

Answer. I understood that they did, as already stated; I received them by express from that bank, and since possibly by private hands.

Question. In about what sums and about how many times did you receive these bonds from the Albany Exchange Bank?

Answer. I think from fifty to a hundred at a time, and from three to six times.

Question. About when was the first number you received?

Answer. In the spring of 1858.

Question. By whose order or direction did you receive the bonds from the Albany Exchange Bank?

Answer. Selah Chamberlain's.

Question. Was that order written or verbal?

Answer. Written.

Question. Where is that order now.

Answer. I do not know; I think I gave it to Mr. Clark to be delivered to the bank prior to the sending of the bonds to me.

Question. Did you have more than one order, or was it all embraced in one?

Answer. It was in one order; I think it was for $1,500,000 of the bonds.

Question. Was that order given to you personally?

Answer. It was.

Question. Do you know who had possession of and received the

377 remaining fifteen hundred thousand bonds, and what disposition they made of them?

Answer. Seth R. Foster handled and sold a portion, and I presume all of the remainder. I know only as to a portion. I recollect a lot of three or four hundred thousand, and perhaps half a million of them, which he had at one time.

Question. Who sold the bonds that Mr. Foster had?

Answer. I presume he had several brokers; they were the brokers with whom he did his business, and I presume they sold these bonds. They were as follows: H. T. Morgan & Co., Ashley & Norris, J. P. Stanton, Mr. Cutting, Oddis & St. George, Meigs & Greenleaf.

Question. How did he account, and to whom, for the amounts sold by him?

Answer. I only know of his making one remittance, which amounted to twenty thousand dollars.

Question. Were the books of the company taken to Albany?

Answer. All the general books of the company were taken there. The

meetings of the directors, and other business of the company was transacted there.

Question. Between what times were the principal meetings of the directors in Albany?

Answer. The meetings were held there frequently, although irregularly, from December, 1857, up to some time in 1859.

Question. Did you have the meeting there at which the contract with Chamberlain was arranged?

Answer. We did.

378 Question. Where are the books used by you at such meetings?

Answer. I do not know. We had a secretary who kept a record of the various meetings.

Question. Who was the secretary?

Answer. I think Judge Radcliffe was.

Question. When and where did you last see those books?

Answer. At Albany, I think, some time in 1859; that was the last time I saw them; they were in the possesion of the company.

Question. Do you know of their being burnt up or any portion of them?

Answer. I do not.

Question. So far as you know, did Mr. Foster account to any one else, or in any other way, for the lands sold by him save by deposit in the Albany Exchange Bank?

Answer. I do not know that he did.

Question. On whom was this order given by Chamberlain, to which you have alluded?

Answer. It was on Mr. Clark, or on the Albany Exchange Bank, or on the two together, and I think the latter.

Question. Where were you when you received that order?

Answer. I think it was given to me in Milwaukee.

Question. When was it?

Answer. It was in the winter or spring of 1858.

Question. Speaking in reference to the contract of Chamberlain, on the 1st of January, 1858, how long will you say positively it was after this when this order was given to you?

Answer. I will swear it was a week, and I think 'twas one or two

379 months after.

Question. State whether it was the first time after the 1st of January, 1858, that you came to Milwaukee, or at some other time that this order was given to you?

Answer. I think 'twas the first time, and think 'twas after the 1st of February, 1858.

Question. Did you give Mr. Chamberlain a receipt for the order?

Answer. I gave him a receipt or some sort of a paper to the effect that I would account for the bonds.

Question. Do you know anything about the contract for building the road from New Lisbon to Tomah, and with what bonds it was built, if by any?

Answer. I know such a contract was made, and that Mr. Chamberlain completed the road from those places, for three hundred and fifty thousand dollars of the bonds of the first two and a half million of bonds issued.

A. NOXON.

The counsel for the complainants objected to the foregoing testimony on the ground of immateriality and irrelevancy, and by agreement the objection is entered here, and is to have the same effect as if entered to each question separately.

DISTRICT OF WISCONSIN, *ss:*

I certify that the foregoing deposition was taken at the time, place, and in the presence of counsel as therein stated; that the said witness was first duly sworn by me to tell the truth, the whole truth, and nothing but the truth in said cause; that his deposition so taken on oath, was re-
380 duced to writing by me, and after being carefully read over was by said witness subscribed in my presence.

Dated Milwaukee, Nov. 17th, 1860.

WALTER S. CARTER,
U. S. Com'r, dist. of Wisconsin.

381 UNITED STATES OF AMERICA,
State of New York, ss:

By this public instrument be it known to all whom the same doth or may in anywise concern, that I, Edwin F. Corey, a notary public in and for the State of New York, by letters patent under the great seal of said State duly commissioned and sworn, dwelling in the city of New York, do hereby certify that under and by virtue of the acts of Congress of the United States approved 10th of September, 1850, and 29th of July, 1854, to authorize notaries public to take and certify oaths, affirmations, and acknowledgements in certain cases, thereby giving and granting to notaries public full powers and authority to take depositions, and to do such other acts in relation to evidence to be used in the courts of the United States, and in pursuance to the annexed stipulation, did call and cause to be and personally appear before me, at 61 Wall street, in the city of New York, in the county and State aforesaid, Charles F. Southmayd, one of the witnesses named in the annexed stipulation, to testify and the truth to say, on the part and behalf of the defendant, J. Albert Helfenstein, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the district of Wisconsin, at Milwaukee, Wisconsin,
382 in the district aforesaid, wherein Greene C. Bronson, James T. Soutter, and Sheperd Knapp, trustees, are complainants, and the La Crosse and Milwaukee Railroad Company, J. Albert Helfenstein, trustee, *"et al.,"* are defendants, and the said witness being of lawful age, and who having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did depose, testify, and say as follows, as by the annexed and following testimony will appear.

In witness whereof, I have subscribed my name and caused my notarial
[L. S.] seal of office to be hereunto affixed the 29th day of June, A. D. 1860.

EDWIN F. COREY, *Notary Public, New York.*

383 *Stipulation,—Cary & Pratt, and Palmer & Stark et al.*

United States district court, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER AND SHEPERD KANPP, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, *et al.*

It is hereby stipulated between the solicitors for the plaintiff, of the one part, and the solicitors of the defendant J. Albert Helfenstein, trustee, of the other part, that the testimony of H. L. Richards, C. F. Southmayd, S. R. Foster, and such other witnesses as either of the said parties may desire to examine in this cause in the city of New York, may be taken before Edwin

F. Corey, a notary public and U. S. court commissioner, on verbal interrogatories, commencing on the 29th day of June instant; and that the testimony of Stephen Clark, George W. Luther, Artemus Fish, Stephen H. Alden, D. V. W. Radcliffe, Eli Perry, and such other witnesses as either of said parties may desire to examine in the city of Albany, may be taken
384 before a U. S. court commissioner at Albany, commencing on the —— day of ———, on verbal interrogatories. The examination of such witnesses may be continued from day to day until completed, provided the examination of such witnesses in New York and Albany shall be closed by the 4th day of July next, and the testimony so taken shall be reduced to writing, signed and certified in the usual manner of taking depositions, and shall be returned to John M. Miller, clerk of this court, at the city of Milwaukee, duly enclosed and sealed; twenty four hours' notice to be given of the taking of such testimony, at the office of C. N. Potter, esq., 61 Wall st., N. Y. Testimony to be taken in New York first.

CARY & PRATT, *Solicitors for Compl't.*
PALMER & STARK, and
BUTLER, BUTTRICK & COTTRILL,
Sol'ct. for J. Albert Helfenstein, trustee.

Testimony of C. F. Southmayd.

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees, &c.,
agst.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, and others, defendants.

On the 29th day of June, 1860, before me, personally appeared Mr. Whiting, of counsel of the complainants, Mr. Buttrick of counsel for the defendants, J. Albert Helfenstein, trustee, &c., and Charles F. Southmayd, have been duly sworn in behalf of the defendants, pursuant to the stipulation hereto annexed, testified as follows:

I am now one of the firm of Everts, Southmayd & Choate. I was in 1858 of the firm of Butler, Everts & Southmayd, who were the attorneys of Vose, Livingston & Company, agst. the plaintiffs in this suit, Prentiss Dow and the La Crosse and Milwaukee Railroad Company. The nature and object of that proceeding was this: The suit was brought by Vose, Living-
386 ston & Co., as holders of a large number of the land grant bonds, so called, of the La Crosse and Milwaukee Railroad Company, secured by the mortgage dated Dec. 31st, 1856, to the complainants in this action, to restrain the La Crosse and Milwaukee Railroad Company from negotiating, pledging, or in any way disposing of any bonds secured by that mortgage, beyond those which had already been put in circulation; to restrain the trustees from countersigning any more of such bonds, and to restrain Prentiss Dow, an officer of the company, from delivering or parting with certain of such bonds to the amount of $184,000, which the complainants alleged had been countersigned by the trustees, but had not been actually negotiated, and were in the hands of Dow for the account of the company. This was the general scope of the suit. The particulars will more fully appear from the original complaint which I hold in my hands. This suit was pending in the September court in the State of New York, in the city and county of New York. This suit was commenced October
387 17th, 1857. An injunction was obtained, the original of which I hold in my hands, but not quite as broad as the prayer of the com-

plaint. It did not restrain the trustees from countersigning the bonds. This was a temporary injunction, with an order to show cause why the injunction should not be made from time to time. This order was adjourned by stipulation, or never was heard in fact. I hold in my hand the original injunctional order, which I produce for the inspection of court. It continued in force until January 28th, 1858, when, by stipulation, the suit was discontinued and the injunction dissolved. I hold in my hand a duplicate consent to the discontinuance of the suit, signed by Butler, Everts & Southmayd, for the plaintiffs, and Stephen Clark, for the La Crosse and Milwaukee Company, as its president. After the granting of the injunction various applications were made to me, as representing the plaintiffs, and, as I understood to them personally, to consent to allow the company to go on and issue bonds for the purpose of finishing the road from the point to which it was then finished to La Crosse. These negotiations lasted a good while; second parties were concerned in them on the part of the company, and there
388 was a good deal of discussion on various propositions. They attempted to convince us that if we would allow them to make further issues of bonds, &c., to complete the road to La Crosse, the security of Vose, Livingston & Company for their bonds would be improved rather than diminished, they offering to submit to certain conditions dictated by us, tending to strengthen the mortgage securities at the time of the discontinuance, January 28th, 1858. The modification of the trust deed of December 31st, 1856, was made as a condition, and there were some other conditions, embracing the modification of Selah Chamberlain's lease, and an agreement giving the land grant bonds to be issued priority of the judgment against the company in Chamberlain's favor. There was also an arrangement for depositing the bonds which were to be issued in the hands of a Mr. Lovitt, cashier of a bank in Albany, I think the Albany Exchange Bank, to be withdrawn only from time to time, as the work on the road to La Crosse should progress

Question. Will you state whether, to your knowledge, any of the
389 papers in the suit of Vose, Livingston & Company against the La Crosse and Milwaukee Railroad Company and others, to which you have testified, were ever filed in the court in which the action was pending, and if not, what disposition were made of them?

Answer. The original summons, complaint, and injunction were retained in the hands of the plaintiffs' attorneys, as is quite usual with attorneys under the practice in our courts, and I now hold them in my hand. By our code the opposite party may, by written notice, require such papers to be filed. No such requirements were made in this case. The defendants never put in any answer. I do not think any other paper is on file than the undertaking given by the plaintiffs on obtaining the injunction.

Question. Will you attach these original papers to your deposition, and if not, will you allow the commissioner to make and attach copies thereof hereto?

Answer. I do not think it proper to part with the original papers, but I have no objection to copies being taken. I think I drew all the
390 papers of settlement between the plaintiffs, Vose, Livingston & Co., and the La Crosse and Milwaukee Railroad Company and others, to which I have testified.

(The counsel for the complainants in due time objected to each and every to each and every question to which the foregoing testimony is an answer, and to such testimony as immaterial, irrelevant, and incompetent, and the same is taken subject to such objection, with the same force and effect as if the same had been severally and specifically stated, and had been with such questions had been severally written down above.)

On being cross-examined in behalf of the plaintiffs.

Question. In the negotiations to which you have referred in your direct testimony, do you mean to say that the trustees (the complainants) made any of the propositions you there refer to in behalf of the company?

Answer. I do not. I never saw either of the trustees upon the subject, although they were made defendants in the suit. My impression is they were not served with process. I do not think they took any part in the negotiations or in the proceedings in the case. I suppose the modifi-
391 cation of the mortgage was made with their concurrence.

CH'S SOUTHMAYD.

Sworn and subscribed to, before me the 29th day of June, 1860, A. D.
EDWIN F. COREY, *Notary Public.*

Stipulation.

It is hereby stipulated by and between the complainants and the defendant, J. Albert Helfenstein, trustee, that "Schedule A," hereto annexed, is a true copy of the summons and complaint in the case of Vose, Livingston & Company against the complainants, the La Crosse and Milwaukee Railroad Company, and Prentiss Dow, mentioned in the foregoing testimony of Charles F. Southmayd; that "Schedule B," hereto annexed, is a true copy of the original order to show cause in said action and injunction, with also an endorsement thereon, and stipulation in relation thereto, and that "Schedule C," hereto attached, is a true copy of the stipulation to discontinue said action, the original of all of which schedules were produced by the said Southmayd on his examination aforesaid; and it is further stipulated and agreed that the same may be read on the hearing of this action with the same force and effect as though the said Southmayd had produced
391 the same and sworn to them as true copies of the originals, produced by him, subject to the rights of the complainants to object to the competency of the testimony, but not of the manner of taking it.

PALMER & STARK, and
BUTLER, BUTTRICK & COTTRILL,
CARY & PRATT, *for Helfenstein.*

Supreme court, city and county of New York.

"SCHEDULE A."

FRANCIS VOSE, EDWARD LIVINGSTON AND CHARLES L. Perkins, pl'ffs,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Green C. Bronson, James T. Soutter, Shepard Knapp, and Prentiss Dow, de'ts.
} Summons for relief.

To the defendants above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and serve a copy of your answer to the said complaint on the subscribers, at their office, No. 2 Hanover street, in the city of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiffs in this action will apply to the court for the relief demanded in the complaint.

Dated October 17, 1857.

BUTLER, EVERTS & SOUTHMAYD,
Plaintiffs' Attorneys.

Exhibit, complaint of Vose et al.

Supreme court, city and county of New York.

FRANCIS VOSE, EDWARD LIVINGSTON, AND CHARLES L. PERKINS,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Greene C. Bronson, James T. Soutter, Sheperd Knapp, and Prentiss Dow.

CITY AND COUNTY OF NEW YORK, *ss:*

Francis Vose, Edward Livingston, and Charles L. Perkins, plaintiffs in this action, by Butler, Evarts & Southmayd, their attorneys, complain of the La Crosse and Milwaukee Railroad Company, Greene C. Bronson, James T. Soutter, Sheperd Knapp, and Prentiss Dow, and thereupon the plaintiffs state that the United States by an act of Congress approved June 3,
393 1856, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad within the limits of that State, from the city of Madison or the village of Columbus, by the way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior out to Bayfield, every alternate section of land designated by odd numbers, for six sections in width on each side of such road, with the provision that the line or route of such railroad should be definitely fixed, in case it should appear that any of the sections so granted had been sold, or even subject to pre-emption rights, an equal quantity of the other public lands of the United States might be selected and appropriated in the manner and subject to the restriction in said act provided, in lieu of the lands so sold or subject to pre-emption; and by said act of Congress it was provided that the lands thereby granted should be exclusively applied to the construction of such railroad, and should be disposed of only as the road should progress, and should be applied to no other purpose whatever; and it was thereby further en-
394 acted that the lands so granted to said State should be disposed of only in the manner following, viz: that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of such road, might be sold; and when the governor of said State should certify to the Secretary of the Interior that any twenty continuous miles of such road had been completed, then another like quantity of such lands might be sold, and so from time to time until such road should be completed; and if the said road should not be completed within ten years no further sale should be made and the unsold lands should revert to the United States.

And the plaintiffs further state that, by an act of the legislature of the State of Wisconsin approved October 11, 1856, the defendant, the La Crosse and Milwaukee Railroad Company, (which is a corporation created by the State of Wisconsin,) was authorized to construct, maintain, and operate a railroad from Madison aforesaid, by the way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior, and to Bayfield; and for the purpose of aiding in the construction of such road all the interest
395 and estate, present and prospective, of the said State of Wisconsin in or to the lands so as aforesaid granted by the United States to said State for the purpose of aiding in the construction of such railroad upon the route aforesaid were thereby granted to the said the La Crosse and Milwau-

kee Railroad Company, with the proviso that the said lands should be exclusively applied in the construction of said road, and should be disposed of only as the work should progress, and should be applied to no other purpose whatsoever. And it was thereby further provided that the title to such lands should vest in the said the La Crosse and Milwaukee Railroad Company in manner following, that is to say, whenever twenty continuous miles of said road should have been completed the governor of the State should certify to the Secretary of the Interior the fact of such completion, and thereupon the title to two hundred and forty sections of said land should vest in the said railroad company, and when a second twenty continuous miles of said road should have been completed the governor should certify as before, and thereupon a further quantity of one hundred and twenty sections of
396 said land should vest in the said company, and so from time to time until said road should be completed, and that deeds should be executed to the said railroad company under the great seal of the State of Wisconsin for the lands to which it should from time to time become entitled as aforesaid. And by the said act of the legislature of the State of Wisconsin it was further provided that the said the La Crosse and Milwaukee Railroad Company should be capable in law of taking and holding the lands so granted by and under the said act of Congress and the said act of the legislature of said State in aid of the construction of such road, and might mortgage, pledge, or otherwise dispose of all the right, title, and interest, claim, and demand of the said company in and to the said lands and in or to any other estate, real or personal, of which said company might be seized or possessed at the time of the execution of such mortgage or which it might acquire subsequently thereto. And by the said act it was further provided that the operation thereof and the grants therein contained should be conditional upon the acceptance by the said railroad company of the same
397 within five days from the passage of said act, which acceptance was, within such period, duly made and manifested by the said company in the manner prescribed by the said act.

And the plaintiffs further state that they are, and at the several times of the occurrence of the transactions herein mentioned were, merchants, trading together as co-partners in the city of New York, under the firm-name of Vose, Livingston & Co.; that in or about the month of November, one thousand eight hundred and fifty-six, the said the La Crosse and Milwaukee Railroad Company entered into negotiations with the said plaintiffs for the purchase from them by said company of a large quantity of iron, to be used in the construction of the railroad of the said company upon the route hereinbefore mentioned, and proposed to secure the price of such iron by the bonds of said company and a mortgage upon the road so to be constructed, with the appurtenances and the lands to which the said company were or would become entitled, in respect of such construction, in pursuance of the said act of Congress and the said act of the legislature of the State of Wisconsin; and that thereupon, on or about the third day
398 of December, one thousand eight hundred and fifty-six, an agreement in writing was made and entered into between the said company and the said plaintiffs, in the words and figures following, that is to say:

NEW YORK, *3rd December*, 1856.

"Memorandum of agreement between the La Crosse and Milwaukee Railroad Company and Vose, Livingston & Co., of New York. 1. Vose, Livingston & Co. agree to sell and the La Crosse and Milwaukee Railroad Company agree to buy eleven thousand (11,000) tons good merchantable quality railroad iron of the Erie pattern, weighing about fifty-eight pounds per linear yard, at fifty-five dollars ($55) per ton of 2,240 pounds, with 2½

per cent. commission. Shipments to be made from Great Britain from January to July, 1857, and the iron delivered in bond at ship-side in New York. 2. Payment to be made, on receipt of bills of lading by the sellers, in the first mortgage bonds of the La Crosse and Milwaukee Railroad Company, at the rate of eighty cents on the dollar, which bonds are on the balance of the road, about 325 miles; and further secured by a mortgage on the lands, about one million acres, recently granted to the company. It is understood and agreed that the sellers shall be entitled to any reduction or ad-
399 vantage, if any, to the subscribers or purchasers of the balance of the issue of $2,500,000 bonds to be made in 1857. Advances of bonds to be made to the sellers, should they require them, from time to time before receipt of bills of lading, say, not to exceed at any one time (unless hereafter agreed) one hundred thousand dollars ($100,000,) which they may call for at any time after the bonds are issued, say, not earlier than the month of February, 1857; the interest that may have accrued on the bonds to the date of the bills of lading to be allowed by the sellers.

3. It is further understood and agreed that the above-mentioned bonds have the privilege of subscribing to fifty per cent. (say five shares) of stock in the La Crosse and Milwaukee Railroad Company for each bond of one thousand dollars received; the holders of said stock to be called upon for only five per cent. when subscribing, and no further assessment to be called upon the stock before the road is all completed, and all the lands exhausted in liquidation of the bonds. 4. The whole amount of bonds to be issued not to exceed ten million dollars, ($10,000,000,) and the amount to be issued in 1857 not to exceed two and a half million dollars ($2,500,000.)
400 6. The rails to be used in the construction of the La Crosse and Milwaukee Railroad, between Portage City and La Crosse, and for no other purpose. 7. The sellers are not to be held responsible for delay or non-delivery of iron caused by war or foreign enemies."

The La Crosse and Milwaukee R. R. Co., by—

BYRON HILBOURN, *President.*
VOSE, LIVINGSTON & CO.

And the said plaintiffs further state that, on or about the thirty-first day of December, one thousand eight hundred and fifty-six, the said the La Crosse and Milwaukee Railroad Company made and executed under its corporate seal, and duly delivered to the defendants, Greene C. Bronson, James T. Soutter, and Sheperd Knapp, its certain mortgage or deed of trust, bearing date on the day and year last aforesaid, reciting the aforesaid act of Congress and act of the legislature of the State of Wisconsin, and further reciting that the said company, for the purpose of constructing its road from Madison, by the way of Portage City, to St. Croix River or Lake, had determined to borrow a sum of money not exceeding ten million of dollars, and to issue its bonds for the repayment of the money so borrowed, with the interest thereon, which bonds would be substantially in the form
401 of the said mortgage set forth, that is to say, bonds of the said railroad company, acknowledging itself to be indebted to the bearer thereof in the sum of one thousand dollars (except as to two thousand of said bonds, which were to be for five hundred dollars each) for money borrowed for the construction of the road of said company from Madison to the St. Croix River or Lake, and obligating the said company to pay such sum to the bearer of said bonds on the first day of February, in the year one thousand eight hundred and seventy-seven, at the Bank of the Republic, in the city of New York, with interest at the rate of seven per cent. per annum, payable in the city of New York semi-annually, on the first days of February and August in each year, on presentation of the coupons or interest war-

rants thereunto annexed, each of such bonds specifying upon its face that it was one of an aggregate quantity of bonds amounting in all to ten millions of dollars, secured by a deed of trust, made by said company, to said Greene C. Bronson, James T. Soutter, Sheperd Knapp, conveying all the estate which the said company then had or might thereafter acquire in all the lands granted to it by the said act of the legislature of the State
402 of Wisconsin, in pursuance of the said act of Congress, as far as such lands were applicable to the construction of said road from Madison, by the way of Portage City, to the St. Croix River or Lake, estimated to be about one million of acres, and also conveying all such interest as said company had acquired, or might thereafter acquire, in said road from Madison to St. Croix River or Lake, and in the road of said company from Portage City to La Crosse, with all the equipments and other things pertaining to said road, each of which bonds was to be under the corporate seal of said company attested by its president and secretary, and to be registered and countersigned by the said trustees; and further reciting that the said railroad company had determined to secure the payment of such bonds as might be issued as aforesaid, in the manner in the said mortgage or deed of trust provided; by which mortgage or deed of trust, after the recital aforesaid, the said the La Crosse and Milwaukee Railroad Company did grant and convey to the said Greene C. Bronson, James T. Soutter, and Sheperd Knapp, trustees as aforesaid, all and singular the tracts
403 and pieces of land which then were or might hereafter be or constitute parts of the site or roadway of said company from Madison, by the way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse, and the superstructure of said roads, whether then made or to be made thereafter, and all the other improvements on or pertaining to said road, whether then built and made or to be built and made thereafter; also the rolling stock and equipments which had been or might thereafter be procured for or used on said road, and the franchises of said company relating to said roads, and also all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the said act of Congress and said act of the legislature of Wisconsin, so far as such lands pertained or were applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix River or Lake, estimated to be about one million acres of land, embracing all such property within the description aforesaid as said company should thereafter acquire, as well as that which had been already acquired, to have and to hold all and singular the said mortgaged property, estates, and interests unto the said Greene C. Bronson, James T. Soutter, and Sheperd Knapp, as such trustees, their successors or
404 assigns, upon the trust in such instrument declared, and for the security of the bonds to be issued as therein recited, by which trusts it was and is in substance provided that the said trustees or their successors shall receive the proceeds of the sales of all the said mortgaged lands, vested or to be vested in said company or its assigns, under or by virtue of the said act of Congress and the said act of the legislature of the State of Wisconsin, and shall likewise, in case of default of payment of the principal or interest secured by said bonds to be issued as thereinbefore stated, take possession of all the said railroad embraced in such mortgage, and to be constructed as aforesaid, with the appurtenances, and receive the income thereof; and, in case of continuance of such default for a specified period, sell said railroad and its appurtenances at public auction and receive the proceeds thereof; and that all the funds to be received by the said trustees from the proceeds of the said mortgaged property, estates, and interests, after first paying thereout their expenses and charges, shall be applied by

the said trustees to the payment and redemption of the principal and
405 interest secured by the bonds so as hereinbefore mentioned proposed to be issued by said company for the purpose of constructing its road as aforesaid; and it was thereby declared that the said trust should extend to such bonds, and such only, as should be registered and countersigned by the said trustees.

And the said plaintiffs further state that under and in pursuance of the above-mentioned contract of December 3, 1856, they proceeded from time to time, during the months of April, May, June, and July, in the year 1857, to make deliveries to said company of iron, as thereby contracted, and from time to time received, in settlement for the iron so delivered, bonds of the said the La Crosse and Milwaukee Railroad Company issued under and purporting to be secured by the mortgage hereinbefore set forth, and they still own five hundred and thirteen of the bonds so by them received for such iron, which bonds are for the payment of one thousand dollars each, with interest semi-annually, in accordance with the above-mentioned recitals of said mortgage, and are respectively registered and countersigned by the said trustees. And the plaintiffs further state that they were originally induced to enter into the said contract for supplying iron to the said
406 company upon the representation made to them by the said company through its officers and agents who negotiated the transaction, that the said company would be enable by means by the issue of its said bonds for two and a half millions of dollars, during the year one thousand eight hundred and fifty-seven, (that being the extent to which such issue during that year was limited by the said contract,) and the negotiations of such bonds at a rate not less than eighty per cent. of the par value or face thereof, as provided in and contemplated by the said agreement with the plaintiffs, to construct and finish within the year 1857 one hundred miles of the line of the railroad of said company, upon the aforesaid route, embraced in and covered by the mortgage hereinbefore set forth, by means whereof the said mortgage would become a perfected lien upon such one hundred miles of road and upon the large quantity of lands to which the said company, or its assigns, would, under and by virtue of the said acts of Congress and of the State of Wisconsin, become entitled in consequence of the construction of such part of said line, and the bonds so received by the plaintiffs would become satisfactorily secured; that the pecuniary
407 responsibility of the said company, apart from the security to be derived from such mortgage and the construction of such road upon the route covered thereby, was wholly inadequate to justify a credit to said company for the price of said iron, and that it was only upon the basis of the security thus promised to be afforded that the plaintiffs consented to contract for the sale of such iron, and they would never otherwise have supplied or consented to supply the same, as the said company well knew and fully understood.

The plaintiffs further state that shortly after the making of said agreement of December 3, 1856, and before the delivery of any iron thereunder, the said company, through its officers and active managing and financial agents, represented to the said plaintiffs that the whole of said amount of two millions five hundred thousand dollars of said bonds had been subscribed for at rates less than eighty per cent., and that the funds to be derived therefrom would be amply sufficient for the complete construction of the said one hundred miles of road, and from time to time, while such deliveries were making, the said company continued to represent to the plaintiffs that the parties who had subscribed for said bonds, at the rate aforesaid,
408 were in regular course, taking and making payment therefor, and that the company would and could, without difficulty, complete said

one hundred miles of road within the current year, and the plaintiffs had no knowledge or suspicion that any of such statements were untrue until after the last delivery by them made of such iron; and by such statements and their reliance upon the truth thereof, they were from time to time led and induced to deliver such iron which they would not otherwise have done.

The plaintiffs further state that since such last delivery they have discovered that the statements so made by said company were and are untrue; that a large proportion of said bonds, amounting to between six and seven hundred thousand dollars, have not been sold or disposed of by said company, and either were not subscribed for at all or were subscribed for by parties who failed to take or pay for the same; and that said company has no prospect of completing, within the year 1857, more than a small proportion of the said one hundred miles of road, and that it has so wasted and misapplied the said bonds or their proceeds, and is proposing to misapply the said bonds yet on hand, as that the proceeds of the whole two million five hundred thousand dollars of bonds aforesaid will not suffice even to complete said one hundred miles of road, or any sufficient portion of the same
409 to afford any adequate security for said bonds, or make any near approach thereto.

The plaintiffs further state that the said company has executed and procured to be registered and countersigned by the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees aforesaid, as embraced within the security of the mortgage deed of trust, hereinbefore set forth, its bonds to the amount of two millions five hundred thousand dollars, that, as the plaintiffs have been informed by the officers of said company, and believe, the said company has issued and absolutely disposed of such bonds to the amount, (including those delivered to the plaintiffs for iron as aforesaid,) of one million eight hundred and twenty-two thousand dollars, or thereabouts; that, as the officers of the company allege, none of these bonds have been disposed of at a less rate then eighty cents on the dollar, and at that rate the proceeds of the bonds received by said company, exclusive of the iron obtained from the plaintiffs, amount to eight hundred and fifteen thousand dollars or thereabouts; that the contract price for the construction of said railroad, as represented to the plaintiffs by said company, was twelve thousand dollars per mile, exclusive of the iron which was obtained
410 from the plaintiffs; that the only portion of the line of road covered by the mortgage aforesaid, which has been completed, is a piece of road commencing at Portage City, and running thence westward about twenty miles, the cost whereof, exclusive of the iron, at the aforesaid rate of twelve thousand dollars per mile, with an addition of eighty thousand dollars for the cost of a bridge, can be no more than about three hundred and twenty thousand dollars; that, according to the best knowledge and information of the plaintiffs, after careful inquiry and investigation, and as they verily believe, no further progress has been made by said company in or towards the construction of the line of road covered by the mortgage aforesaid, except as follows, viz: 1st the grading and placing in readiness for the iron, or nearly so, of about twenty-four miles of road, immediately adjoining upon the westward the completed portion of last above mentioned, the cost of which twenty-four miles of road, at the above-mentioned contract rate, cannot exceed two hundred and eighty-eight thousand dollars, or thereabouts, of which amount there is work yet to be done to the amount of about from forty to fifty thousand dollars. 2nd. The partial grading, to the extent of about one third, of seventeen miles of road adjoining upon the west
411 the piece last mentioned, the cost whereof cannot exceed about eighty-five thousand dollars. 3rd. The work upon a tunnel between Portage City and La Crosse, amounting to not over one hundred thousand dollars or

thereabouts. 4th. Work done between Madison and Portage City, amounting to not over twenty thousand dollars or thereabouts.

And the plaintiffs, upon their information and belief, allege that the whole cost of the work done and material, (other than iron,) furnished up to this time upon the line of road embraced in or covered by the mortgage aforesaid, does not exceed the above-mentioned amount of eight hundred and fifteen thousand dollars or thereabouts, realized by the said company from the said bonds, which have been absolutely disposed of, excluding those issued to the said plaintiffs for iron; that all of the iron which has been laid upon such line of road, has been obtained from the plaintiffs, as above stated; that if the amount so obtained from the absolute disposition of said bonds had been faithfully applied to the construction of such line of road embraced in said mortgage, it would have fully sufficed to pay for all the work done and mentioned, furnished up to this time, upon such line of road, and
412 there can be no legitimate occasion for the use or negotiation of any further amount of said two millions and a half of bonds.

But the plaintiffs further state that the work done and materials upon and for the line of road embraced in the said mortgage have not been fully paid for, but there are outstanding demands against said company, on account thereof, to a large amount, some of which are real and some fictitious and pretended. And particularly the plaintiffs, upon their information and belief, allege that the said railroad company has confessed a judgment in favor of Seth Chamberlain, the contractor for such line of road, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, besides costs, for pretended claims of said Chamberlain, as such contractor, for work done and materials furnished upon such line of road, under which, as the plaintiffs are informed and believe, the said Chamberlin has undertaken to levy upon the iron obtained from the plaintiffs, and not yet laid upon said road, or some large part thereof.

And the plaintiffs, upon their information and belief, allege that the judgment so confessed to said Chamberlin, is fraudulent, and that the amount thereof is more than three times the actual indebtedness of said company to said Chamberlin.

413 And the said plaintiffs, upon information derived from the officers of said company, and as they verily believe, allege that of the aforesaid bonds to the amount of two millions five hundred thousand dollars, which have been so registered and countersigned by the said trustees, bonds to the amount of four hundred and eighty-four thousand dollars, or thereabouts, remain wholly unused and undisposed of by the said company, and that the same are now in the hands and possession, or under the control of the defendant Prentiss Dow, the transfer agent of said company, who holds the same for account of said company, and who has admitted to the plaintiffs that he has no right in or claim upon the same, that the president and some of the directors of the said company have recently applied to the said Dow to deliver up to them the said bonds or some of them, in order that they may issue and negotiate the same, and although the said Dow for some time refused to give up the said bonds, upon the ground that there was no legitimate occasion for their use, and that there is danger of their misapplication by the officers of said company to the prejudice of the bona fide bondholders, he refuses to give to the plaintiffs any satisfactory assurance that he will persist in his refusal to surrender the same; and, as the
414 plaintiffs believe and allege, the said Dow, unless he is thereupon restrained, is about to and will surrender the said bonds to the president and directors of said company, or some of them.

And the plaintiffs further state that the said the La Crosse and Milwaukee Railroad Company has an office and general agency in the city of New

York, and the greater part of its financial business has been and is carried on in said city; and that there the said bonds were issued to the plaintiffs and to most of the other bondholders; that the defendants Dow, Bronson, Soutter, and Knapp are residents of this State, and the said unissued bonds are within this State.

The plaintiffs further state that they have applied to the president of said railroad company and the officers having the chief active charge of its affairs, to have the said four hundred and eighty-four bonds, in the hands or under the control of said Dow, cancelled, or placed in the hands of said trustees, in order to prevent the misuse thereof, but the said president and officers wholly refuse to comply with such request.

And the plaintiffs, upon their information and belief, further state that besides the said bonds issued under and purporting to be secured by the said mortgage, which have been absolutely issued and negotiated by said company, and those now remaining unused in the hands or under the con-
415 trol of said Dow as aforesaid, others of said bonds to the amount of one hundred and ninety-four thousand dollars or thereabouts, have not been sold or absolutely disposed of by said company, but remain in its hands unused, or have been hypothecated for comparatively small amounts, being less than one half the amount of such bonds, but that the moneys obtained upon such hypothecations have been either wholly or in great part misapplied by said company, and diverted to purposes not connected with the construction of the line of railroad embraced in said mortgage.

And the plaintiffs, upon their information and belief, further allege that the said company has misapplied large amounts of the moneys by it obtained from the negotiation of the bonds aforesaid, which have been sold or absolutely disposed of; that some portions of said amount have been applied to the use and benefit of portions of the railroad of said company not embraced in the said mortgage, and other portions of the same to purposes which are wholly illegitimate and fraudulent.

That the said company have issued bonds and given evidences of debt to parties having no legal or valid demands against it, and either wholly without consideration or upon fraudulent and illegimate contracts and
416 considerations, and has made cash payments upon such bonds or evidences of debt illegally issued, and has made other cash payments for such illegitimate and fraudulent purposes. And the plaintiffs further state that on or about the first day of July, one thousand eight hundred and fifty-seven, the said company paid in cash a dividend of six per cent. upon its capital stock, which had been issued for the construction of the eastern division of its road, which is not embraced in or covered by the mortgage aforesaid, and is not within the limit prescribed by the act of Congress granting the lands aforesaid. That such dividend was pretended to be made out of the surplus profits of such eastern division, but, as the plaintiffs are informed and believe, the said dividend was entirely fraudulent; that no profits had been earned to justify the same, and that the said dividend was either wholly or in great part paid out of the moneys obtained from the issue of bonds under the mortgage hereinbefore set forth.

The plaintiffs further state that the said company is greatly embarrassed in its affairs; that for several weeks past its maturing obligations have not been met, but have been dishonored and so remain, and that the said company is utterly and hopelessly insolvent.

417 And the plaintiffs, upon their information and belief, allege that the president and directors of the said company, if they can obtain the possession and control of the unused bonds countersigned by the said trustees as aforesaid, are about to, and will use and apply the same to purposes wholly foreign to the construction of the line of road embraced in

said mortgage and will sell or dispose of the same for small and inconsiderable amounts, being not more than twenty-five or thirty per cent. of the face or par value thereof; and that inasmuch as said bonds are payable to bearer, the same, if permitted to be issued by said president and directors, may and will pass into the hands of bona fide holders, without notice of the fraudulent or illegal mode and considerations of the issue thereof, and that thereby the rights of the plaintiffs and the other bona fide holders of the bonds secured by said mortgage will be greatly prejudiced. And the plaintiffs further state that the line of road embraced in the said mortgage to said Bronson, Soutter, and Knapp, in its present condition, with the whole of the said mortgaged property, is a scanty and insufficient security for the bonds which have been absolutely issued under said mortgage, and which are now in the hands of bona fide holders, and that said company has not the means
418 and is not about to make any substantial addition to, or improvement of, the said line of road, unless it be the laying of the iron upon the said twenty-four miles, or thereabouts, of road lying to the westward of and immediately adjoining the twenty miles of road, or thereabouts, which has been completed, and that if it shall lay such iron the security of the said bona fide bondholders will still be inadequate and insufficient.

And the plaintiffs further state for as much as they are advised that they are entitled by and under the said contract of December 3, 1856, to require absolutely that all the iron delivered by them thereunder shall be laid upon the line of road in said contract prescribed in that behalf, and in case of the eventual default of the said company so to lay the same to require the iron which may not so be used to be restored to them upon their returning such proportion of the said bonds by them received as may in that event be properly required of them; that they do not intend by this suit, or by anything in the complaint contained, to waive, prejudice or impair any of their rights in that regard; but they expressly reserve all such rights, this suit being intended for their protection of their rights in respect of those of said
419 bonds of which they shall ultimately remain the owners.

And the plaintiffs further state that although by the terms of the said contract of December 3, 1856, if the said company shall, within the present year, issue any of its said bonds at a rate less than eighty per cent. it will be liable to pay to the plaintiffs an additional price for said iron proportioned to the reduction in the price of the said bonds so sold to other parties, it has not and will not have the means of responding to such liability, and the plaintiffs will be remidiless therefor.

And the plaintiffs further allege that the said company is to such extent embarrassed and insolvent, and the officers thereof have heretofore misapplied the said bonds and their proceeds, and manifested their untrustworthiness, as that the security of the plaintiffs and the other bona fide holders of the bonds secured by said mortgage, requires that the said company and its officers shall no longer be trusted with the disposition of those of said bonds which have not been sold or absolutely disposed of. And the plaintiffs further state that the suit is commenced in behalf of the plaintiffs and all other bona fide holders of the said bonds who shall elect to come in and contribute to the expenses of this suit.

And thereupon the said plaintiffs demand judgment that the defendants,
420 the La Crosse and Milwaukee Railroad Company, its officers and agents, and each and every of them, may be perpetually enjoined and restrained from selling, negotiating, pledging, using, or in any way disposing of or interfering with any of the bonds of the said the La Crosse and Milwaukee Railroad Company, secured, or purporting to be secured, by the above-mentioned mortgage or deed of trust, bearing date of December 3, 1856, made by said company to the defendants, Greene C. Bronson, James T. Soutter, and Shep-

erd Knapp, and from demanding or obtaining from the defendant, Prentiss Dow, any of such bonds which are in his hands or possession, or under his control, and that the said Prentiss Dow may be perpetually enjoined and restrained from delivering up or parting with, except under the order of this court, and from in any way using or disposing of any of such bonds which are in his hands or possession or under his control, directly or indirectly, and which are held for account of the said company, and particularly such bonds to the amount of four hundred and eighty-four thousand dollars hereinbefore mentioned, and that a temporary injunction by order may be granted, to the effect above demanded; that the said bonds to the amount of four hundred and eighty-four thousand dollars or thereabouts may, under the judgment of this court, be cancelled and destroyed, and that pending this suit
421 a receiver thereof be appointed; that the said trustees may be enjoined from countersigning any bonds purporting to be issued under or secured by said mortgage or deed of trust; that the plaintiffs may recover their costs in this action, and that they may have such further or such other judgment and relief in the premises as may be proper.

BUTLER, EVARTS & SOUTHMAYD, *Att'ys Pl'ffs.*

CITY AND COUNTY OF NEW YORK, *ss:*

Edward Livingston, one of the above-named plaintiffs, being duly sworn, deposeth and saith that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true. And further saith not.

E. LIVINGSTON.

Sworn to before me this 17th day of October, 1857.

EDWIN M. DANIEL, *Comm'r of Deeds.*

422 Supreme court, city and county of New York.

FRANCIS VOSE, EDWARD LIVINGSTON, AND CHARLES L. Perkins
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Greene C. Bronson, James T. Soutter, Sheperd Knapp, and Prentiss Dow.
} "Schedule B."

It appearing satisfactorily to me by the affidavit of Edward Livingston, one of the plaintiffs, that sufficient grounds for this order of injunction exist, I do hereby order that the defendant, the La Crosse and Milwaukee Railroad Company, their officers and agents, and each and every of them, do show cause, before me on the 22nd day of October, instant, at chambers in the City Hall, at 10 a. m., why the said defendant should not, and in the mean time they do, refrain from selling, negotiating, pledging, using, or in any way disposing of or interfering with any of the bonds of the La Crosse and Milwaukee Railroad Company, secured or purporting to be secured by the mortgage or deed of trust in the complaint mentioned, bearing date
423 December thirty-first, one thousand eight hundred and fifty-six, made by the said railroad company to Greene C. Bronson, James T. Soutter, and Sheperd Knapp, trustees, and from demanding or obtaining from the defendant Prentiss Dow any of such bonds which are in his hands or possession, or under his control; and that the said Prentiss Dow do desist and refrain from delivering up, parting with, or in any way using or disposing of any of such bonds which are in his hands or possession, or under his control, directly or indirectly, and which are held for account of said railroad

company; and particularly such bonds to the amount of four hundred and eighty thousand dollars or thereabout in the complaint mentioned, until the further order of this court; and in case of disobedience to this order, you will be liable to the punishment therefor prescribed by law.

Dated October 17th, 1857.

HENRY E. DAVIS.

The time for showing cause under the within order is adjoined, at def't's request, to Wednesday, the 28th October, inst., at chambers, at 10 a. m., without prejudice to the temporary injunction, which is to remain in force meanwhile.

D. October 21, 1857.

424 PIERPONT & STANLEY,
Att'ys for La Crosse R. R. Co.
PRENTISS DOW.

Upon reading the foregoing consent of the defendant Dow, and of the att'ys for the defendant, the La Crosse and Milwaukee Railroad Company, and on motion of Butler, Evarts, and Southmayd, plaintiffs' attorneys, it is hereby ordered that the time for showing cause under the within order be, and the same is, adjoined to the 28th day of October instant, at ten o'clock a. m., at the chambers of the supreme court; and it is further ordered that the injunction contained in the within order in the mean time remain in full force and virtue.

Dated Oct. 22nd, 1857.

J. J. ROOSVELT.

It is agreed that the time for showing cause under the within order be further adjourned to the 14th day of November next, at 10 a. m., at chambers; and that in the mean time the injunction contained in the within order remain in full force and effect. Dated Oct. 28, 1857.

PRENTISS DOW.
PIERPONT & STANLEY,
for La Crosse and Mil. R. R. Co.

Upon reading the above consent, and on motion of Butler, Evarts, and Southmayd, plaintiffs' attorneys, it is hereby ordered that the time
425 for showing cause under the within order stand further adjourned to November 14th, 1857, at 10 o'clock a. m., at chambers; the injunction therein contained in the mean time to remain in full force.

Dated Oct. 28th, 1857.

R.

Supreme Court.

FRANCIS VOSE, EDWARD LIVINGSTON, AND CHARLES L. Perkins
vs.
THE LA CROSSE AND MILWAUKEE R. R. CO. AND OTHERS.

It is agreed that the time for showing cause under the annexed order be further adjourned to the 5th day of December instant, at 10 a. m., at chambers; and that in the mean time the injunction contained in the said order remain in force.

Nov. 13, 1857.

PIERPONT & STANLEY, *D'f'ts' Att'ys.*

It is agreed that the time for showing cause under the annexed order be further adjoined to the nineteenth day of December instant, at 10 a. m., at chambers; and that in the mean time the injunction contained in said order remain in full force.

Dated Dec. 5th, 1857.

PIERPONT & STANLEY, *Def'ts' Att'ys.*

426 It is agreed that the time for showing cause under the annexed order be further adjourned to second day of January next, at 10 a. m., at chambers; and that in the mean time the injunction contained in said order remain in full force.

Dated December 19th, 1857.

PIERPONT & STANLEY,
for the L. and M. R. R. Co. and Prentiss Dow.

It is agreed that the time for showing cause under the annexed order be further adjourned to the 16th day of January inst., at 11 o'clock in the forenoon; the injunction in said order contained meantime to remain in full force.

Dated January 2nd, 1858.

PIERPONT & STANLEY, *Def'ts' Att'ys.*

It is agreed that the time for showing cause under the annexed order be further adjourned to the 30th day of January instant, at 11 o'clock in the forenoon; the injunction in said order meantime to remain in full force.

Dated January 15th, 1858.

PIERPONT & STANLEY, *Def'ts' Att'ys.*

It is agreed that the time for showing cause under the annexed order be further adjourned to the 13th day of February next, at 11 o'clock in the forenoon; the injunction in said order contained meantime to remain in full force.

Dated January 30th, 1858.

PIERPONT & STANLEY, *Def'ts' Attorneys.*

427 Supreme Court.

FRANCIS VOSE, EDWARD LIVINGSTON, AND CHARLES L. Perkins
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Greene C. Bronson, James T. Soutter, and Prentiss Dow, and Sheperd Knapp. } "Schedule C."

It is stipulated that this suit be, and hereby is, discontinued without costs to either party against the other, and the injunction therein is hereby dissolved. No claim is to be made upon the undertaking given by or in behalf of the plaintiffs upon obtaining said injunction, and said undertaking may be taken from the files and cancelled.

January 20, 1858.

BUTLER, EVARTS & SOUTHMAYD,
Plaintiffs' Att'y.

The La Crosse and Milwaukee Railroad Company, by—
STEPHEN CLARK, *President.*

428 UNITED STATES OF AMERICA,
State of New York, ss:

By this public instrument be it known to all whom the same doth or may

in anywise concern, that I, Edwin F. Corey, a notary public in and for the State of New York, by letters patent under the great seal of State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that in pursuance to the annexed stipulation, appeared before me, on this twenty-ninth day of June, A. D. 1860, Charles F. Southmayd, one of the witnesses named therein, as well as Mr. Buttrick, one of the councils for defendant, J. Albert Helfenstein, and Potter and Whiting, councilors on part of the complainant, the said Charles F. Southmayd, whose testimony is hereto annexed, and who is of sound mind and lawful age, was by me carefully examined and sworn to testify the truth, the whole truth, and nothing but the truth, and his deposition was reduced to writing in his presence, and from his statements, and thereupon subscribed by him, and the schedules marked "A, B, C," and the same referred to in his deposition and stipulation thereto; and I have retained the said deposition and schedules in my possession for the purpose of closing and directing to the clerk of the court for which the same was taken.

I further certify that I am not a counsel nor attorney for either of
429 the parties nor in any way interested in the case.

In witness whereof, I have hereunto set my name and affixed my official, this twenty-ninth day of June, A. D. 1860.

[L. S.] EDWIN F. COREY, *Notary Public.*

430 UNITED STATES OF AMERICA,
State of New York, ss:

By this public instrument be it known to all who the same doth or may concern in anywise that I, Edwin F. Corey, junior, a public notary in and for the State of New York by letters patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that, under and by virtue of the acts of Congress of the Unitad States, approved 16th of September, 1850, by the thirty-first Congress, 1st session, entitled "An act to authorize notaries public to take and certify oaths, affirmations, and acknowledgements in certain cases," also another act passed by the thirty-third Congress of the United States, 1st session, chapter 159, on the 29th of July, 1854, entitled "An act supplementary to an act entitled 'An act to authorize notaries public to take and certify oaths affirmations, and acknowledgments in certain cases,'" thereby giving and granting to notaries public full powers and authority to take depositions, and to do such other acts in relation to evidence to be used in the courts of the United States in the same manner and with the same effect as commissioners to take acknowledgments of bail and affidavits may now lawfully take and do, did call and cause to be and personally appear
430½ before me, at No. 61 Wall street, in the city of New York, in the county and State aforesaid, Eugene Mowatt, Charles F. Southmayd, Edwin R. McIlvaine, Benjamin Dana, jr., and Robert K. Dow, to testify and the truth to say, on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the district of Wisconsin, at Milwaukee, in the district aforesaid, wherein Greene C. Bronson and others, trustees, are complainants, and the La Crosse and Milwaukee Railroad Company and others are defendants; and the said witnesses being all of lawful age, and of the age severally noted in the testimony of each of the said witnesses, and each of whom having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine each of the said witnesses, and each of whom did thereupon depose, testify, and say as follows, as by the annexed and following testimony will appear.

In testimony whereof, I have subscribed my name and caused my notarial seal of office to be hereunto affixed, the 12th day of May, in the year of our Lord one thousand eight hundred and sixty.

[L. S.] EDWIN F. COREY, JUN.,
Notary Public, New York.

431 *Stipulation—Emmons, Van Dyke & H., Cary & Pratt.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPherd Knapp, trustees, &c.,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY AND others.

It is hereby stipulated that Francis Vose, Charles F. Southmayd, David E. Wheeler, T. D. Richards, R. K. Dow, Jacob S. Alwood may be examined in the city of New York as witnesses in this cause before Edwin F. Corey, esq., United States commissioner, on verbal interrogatories, at any time before the hearing, on giving two days' previous notice of such examination to Francis Randall, esq.; and other witnesses on the part of the plaintiffs may be examined at any time before said hearing by giving like notice, and any witnesses that the defendants may desire to examine in the city of New York may be examined in like manner on a like notice of two days to Clarkson N. Potter, esq., at No. 6 Wall street, New York. And it is further stipulated that documentary and written testimony may be introduced and read on the trial in the like form and effect as it would have if duly produced and proved before a commissioner and returned as testimony by either party.

432 All evidence taken under the foregoing stipulation will be taken subject to any objection to be urged at the hearing as to the relevancy or competency of such testimony, we waiving by this stipulation all objections as to the manner of taking the depositions. We sign this stipulation in pursuance of a verbal assurance given to Mr. Potter; but when such verbal assurance was given we supposed the testimony would be taken at an earlier day. We do not now know that any testimony taken hereunder will create any delay; but if in consequence of the delay in presenting this stipulation and in taking testimony hereunder we should need, we do not waive our right to apply for continuance or postponement.

In the latter clause of foregoing stipulation the pronoun "we" refers to the solicitors for defendant Chamberlain.

EMMONS, VAN DYKE & HAMILTON,
Sol'rs for S. Chamberlain.
CARY & PRATT, *Sol'rs for Complainants.*

Dated May 8, 1860.

District court of the United States, district of Wisconsin.

GREENE C. BRONSON AND OTHERS, trustees,
ag't
433 SELAH CHAMBERLAIN, impleaded with the La Crosse and Milwaukee Railroad Company and others.

SIR: Please take notice that David E. Wheeler, Francis Vose, Charles F. Southmayd, T. D. Richards, R. K. Dow, Jacob S. Alvord, Eugene Mowatt, Benjamin Dana, jr., will be examined as witnesses in this action in behalf of

the complainants, at the office of Edwin F. Corey, esq., commissioner, &c., Merchants' Exchange, on the 12th day of May instant, at ten o'clock in the foronoon, and at such other times thereafter during said day as the convenience of the said commissioner or parties may require.

Yours, &c.,

CARY & PRATT, *Comp'ts' sol'rs.*
C. N. POTTER, *of counsel.*

FRANCIS RANDALL, Esq.
Dated May 9, 1860.

Due service of a copy of the above notice is admitted this 9th day of May, 1860.

F. RANDALL.

District court of the United States for the district of Wisconsin.

Depositions of witnesses produced, sworn, and examined in a cer-
434 tain cause wherein Greene C. Bronson and others, trustees, are the complainants, and Selah Chamberlain and Alfred J. Helfenstein, trustee, impleaded with the La Crosse and Milwaukee Railroad Company, and others are defendants, on the part of the complainants, at the office of Edwin F. Corey, commissioner, No. Wall street, on the 12th day of May, 1860.

Testimony E. Mowatt.

Eugene Mowatt, being first sworn in behalf the complainants, deposes and says: I reside in the city of Brooklyn, Kings County, New York. I am upwards of twenty-five years of age. I am a bookkeeper. From the month of January to July, 1857, I was cashier for the house of Vose, Livingston & Co., of the city of New York, and familiar with their business. Between those months there was issued by the La Crosse and Milwaukee Railroad Company to the house of Vose, Livingston & Co. seven hundred and eighty-eight bonds, at the times and to the amounts following; that is to say:

1857, March 19, 50 bonds, $1,000 each, Nos. 409–458, inclusive. Am't p'd, 80 cts.

1857, March 26, 55 bonds, $1,000 each, Nos. 483–537, inclusive. Am't p'd, 80 cts.

1857, April 14, 70 bonds, $1,000 each, Nos. 1031–1100, inclusive. Am't p'd, 80 cts.

1857, April 24, 126 bonds, $1,000 each, Nos. 1175–1300, inclusive. Am't p'd, 80 cts.

435 1857, May 14, 100 bonds, $1,000 each, Nos. 1351–1450, inclusive. Am't p'd, 80 cts.

1857, May 14, 4 bonds, $1,000 each, Nos. 1501–1504, inclusive. Am't p'd, 80 cents.

1857, May 14, 12 bonds, $1,000 each, Nos. 1505–1516, inclusive. Am't p'd, 80 cts.

1857, May 19, 68 bonds, $1,000 each, Nos. 1524–1591, inclusive. Am't p'd, 80 cts.

1857, June 3, 9 bonds, $1,000 each, Nos. 1606–1614, inclusive. Am't p'd, 80 cts.

1857, June 3, 109 bonds, $1,000 each, Nos. 1701–1809, inclusive. Am't p'd, 80 cts.

1857, June 3, 71 bonds, $1,000 each, Nos. 1810–1880, inclusive. Am't p'd, 80 cts.

1857, June 22, 14 bonds, $1,000 each, Nos. 1900–1913, inclusive. Am't p'd, 80 cts.

1857, Feb. 10, 100 bonds, $1,000 each, Nos. 126–225, inclusive. Am't p'd, 80 cts.

Total number of bonds, 788.

Vose, Livingston & Co. continue to hold a large portion of these bonds. The remainder were transferred within a very short time to several different persons and firms—bankers, dealers in railroad iron and the like, within the United States and Great Britain. From inspection of some of the company's books (among others an original receipt book, in which were receipts signed by divers persons as well as Vose, Livingston & Co.) and from seeing bonds in the hands of third parties and being somewhat familiar with the negotiation of the bonds, I am prepared to say that a large number of the bonds, to the amount of at least two thousand in number, were issued and sold by the company to a large number of persons within the United States, several of whom I was acquainted with. All the bonds which
436 I saw were dated on the 1st day of February, 1857, as I recollect, and all for one thousand dollars principal, with coupons attached for the time they had to run. From the same means of information I am enabled to state that these bonds are now in the hands of a large number of holders in different parts of the country, and it would be very difficult, if not quite impossible, to ascertain their names, or the amount held by each respectively. Vose, Livingston & Co. took the bonds above referred to at the rate of 80 cents on the dollar.

EUGENE MOWATT.

Sworn and subscribed to before me this 12th day of May, A. D. 1860.

EDWIN F. COREY, JR,

Commissioner for Wisconsin and Notary Public for New York.

Testimony C. F. Southmayd.

Charles F. Southmayd was next introduced for the complainants and, being sworn, said: I am a counsellor-at-law. I reside in the city of New York. I have in my hands a paper writing, being an agreement modifying lease between Selah Chamberlain and the La Crosse and Milwaukee Railroad Company, dated January 28th, 1858, endorsed "Exhibit A, E. F. C., jr., comm'r." I drew this instrument, as one of the papers required to carry out an arrangement by which Vose, Livingston & Co. were to with-
437 draw an injunction they had obtained against the issue of further land grant bonds of the company. The withdrawal of such injunction was to be made upon certain conditions, and the execution of such a paper as this was one of the conditions. Mr. Chamberlain was a party to this arrangement. The new issue of bonds was desired to be made in order to enable him to go on with the work of the road and finish it to La Crosse. This paper was executed in my presence; I am a subscribing witness to it. My attention is directed to 26th line of the first page of said agreement. I find "Portage City" should have been written there at the time the said instrument was drawn by me. The arrangement was that the earnings of the western division of the road, which extended, or was to extend, from Portage City to La Crosse, were to be applied to pay the interest on the land grant bonds. No suggestion was made by any one, to my knowledge, that the application of income to pay interest on the land grant bonds should be of the income of anything less than the whole western division of the road, from Portage City to La Crosse. It was the clear intention that the point referred to in said instrument should be Portage City, and the word road on the 24th line on said page should comprehend the road

from Portage City to La Crosse, and (under my apprehension) con-
438 veyed in what is known as the first land grant mortgage. The inser-
tion of the word junction for Portage City, in the 26th line, is a cler-
ical error.

CH'S F. SOUTHMAYD.

Sworn to and subscribed before me this 12th day of May, A. D. 1860.

EDWIN F. COREY, JR.,
Commissioner for Wisconsin and Notary Public for New York.

Testimony E. R. McIlvaine.

Edward R. McIlvaine was next sworn on the behalf of the complainants, and deposed and said as follows: I am twenty-five years and upwards of age. I am a bank clerk by occupation, in the Bank of Republic, New York City. I reside in the city of Brooklyn. I am and have been transfer clerk in the Bank of Republic, in the city of New York for some years; as such I have been charged with the duty of paying the coupons of the 1st mortgage land grant bonds of the La Crosse and Milwaukee Railroad Company, which coupons were payable at that bank. None of those coupons have been paid since September 30, 1857. There has been no funds what-
439 ever since then to pay them. These coupons were held and presented by a large number of different persons. Since September, 1857, as these coupons have matured, large numbers have been presented to me at the bank for payment, but none of them have been paid.

E. R. McILVAINE.

Subscribed and sworn to before me this 13th day of May, 1860.

EDWIN F. COREY, JR.,
Commissioner for Wisconsin and Notary Public for New York.

Testimony B. Dana, jr.

Benjamain Dana, jr., being next sworn on the part of the complainants, deposed and said: I reside in the city of New York. I am 25 years and upwards of age. I am a bookkeeper by occupation. I know of a large number of the first mortgage land grant bonds of the La Crosse and Milwaukee Railroad Company having been issued by the company, exceeding a million and a half of dollars in amount, to a large number of different holders in the United States, and I know of several parties abroad who now hold them. It would be almost, if not quite, impossible to state by whom they are held or in what numbers, as the holders are so numerous. I have been on the railroad of the company from Portage City to La Crosse; have been at some pains to investigate the business and receipts of the
440 company; have investigated to some extent the estimate which is generally put upon the value of the road, and in my judgment it is worth a very small sum compared with the amount of its first land grant mortgage debt. The bonds received by Vose, Livingston & Co. and the others with which I am familiar were all signed by the officers of the company and sealed with its corporate seal and countersigned by the trustees, complainants. I have inspected the books of the company in the hands of Mr. Chamberlain, and his books as lessee, and I know that he has received the rents, issues, profits, and incomes of the railroad since the execution of his lease. From my observation of the construction of the road I do not think it is built in a substantial or enduring manner, and I think it is suffering constant deterioration beyond wear and tear and natural decay, and requires large repairs, as it was never properly constructed, and in my

judgment it is not worth a million of dollars. It is now in need of repairs to a considerable extent. From the information which I have been able to obtain I should think that the land grant lands, if acquired, would not add a half a million of dollars to the value of the road, from their quality and situation. The lands are not yet obtained by the company.

BENJAMIN DANA, JR.

441 Subscribed and sworn to before me this 12th day of May, 1860.

EDWIN F. COREY, JR.,
Notary Public for New York, and Commissioner for Wisconsin.

Testimony R. K. Dow.

Robert K. Dow was next introduced by the complainants, and being sworn, said:

I reside in the city of New York. In the summer of 1857 I was bookkeeper of the La Crosse and Milwaukee Railroad Company, at their office in the city of New York. I went into the office about the 1st of August, 1857. At that time there had been signed by the trustees two millions and a half of dollars of the first mortgage land grant bonds of that company; I mean the bonds secured by the mortgage to Messrs. Bronson, Soutter, and Knapp, as trustees When I went into the office, about two millions dollars of these twenty-five hundred thousand had been issued. The remaining half million dollars of this lot of bonds came on from Milwaukee, from the home office of the company there to the office here, during the fall of 1857. The two millions that had been issued had gone into the hands of a great number of people. A register to whom these bonds were paid in the first instance by the company was then kept in the New York office, to which I had
442 access, of course. The remaining two million dollars of bonds were issued by the company about December, '57, or January, '58, or subsequently. No interest has been paid on these bonds that matured since February, 1858, so far as I can learn.

ROB'T K. DOW.

Subscribed and sworn to before me this 12th day of May, A. D. 1860.

EDWIN F. COREY, JR.,
Commissioner for Wisconsin, and Notary Public for New York.

STATE OF NEW YORK, *City and county of New York, ss:*

I, Edwin F. Corey junior, commissioner for the State of Wisconsin, in and for said county, do hereby certify that the foregoing depositions of Eugene Mowatt, Charles F. Southmayd, Edward R. McIlvaine, Benjamin Dana, jr., and Robert K. Dow, were taken before me at my office, Merchants' Exchange, 61 Wall street, in the city of New York, in said county, on the twelfth day of May, A. D. 1860, commencing at 10 o'clock a. m.; that they were taken at the request of the complainants upon verbal interrogatories; that it was taken to or used in the suit of Greene C. Bronson and others, trustees, complainants, and Selah Chamberlain, impleaded with the La Crosse and Milwaukee Railroad Company and others, defendants, now pending in
443 the district court of the United States for the district of Wisconsin, in pursuance of the annexed stipulation and admission, and also under the statute authorizing the taking of depositions without notice.

That said deponents *before* were before examination sworn to testify the truth, the whole truth, and nothing but the truth, relative to said cause, and that said depositions were carefully read over to said deponents by me, and then subscribed by them.

In witness whereof, I have hereunto set my hand and affixed my official seal this twelfth day of May, A. D. 1860.

[SEAL.]

EDWIN F. COREY, JR.,
Commissioner for the State of Wisconsin in New York.

UNITED STATES OF AMERICA,
State of New York, ss:

By this public instrument be it known to all whom the same doth or may in anywise concern, that I, Edwin F. Corey, junior, a notary public in and for the State of New York, by letters patent, under the great seal of the said State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that under and by virtue of the acts of Congress of the United States, approved 16th of September, 1850, by the thirty-first Congress, 1st session, entitled "An act to authorize notaries public to take and certify oaths, affirmations, acknowledgments, in certain cases;" also another act passed by the thirty-third Congess of the United States, 1st session, chapter 159, on the 29th July, 1854, entitled "An act supplementary
444 to an act entitled 'An act to authorize notaries public to take and certify oaths, affirmations, and acknowledgments in certain cases,'" thereby giving and granting to notaries public full powers and authority to take depositions, and to do such other acts in relation to evidence to be used in the courts of the United States in the same manner and with the same effect as commissioners to take acknowledgments of bail and affidavits may now lawfully take and do.

And I do further certify that the reason for taking the annexed and foregoing depositions is, and the fact is, the witnesses named, sworn, and examined in said annexed depositions, material and necessary in the cause in the caption of said depositions named, and that they reside in the city of New York and city of Brooklyn, as set forth in their several depositions.

I still further certify that stipulation and notification of the time and place of taking said depositions, signed by the solicitors of the complainants and defendants, are hereto annexed.

I further certify that on the twelfth day of May, A. D. 1860, I was attended by C. N. Potter, on the part of the complainants, (no person appearing for the defendant,) and by the witnesses named in the caption, and whose testimony is hereto annexed, who were all of sound mind and lawful age, and the said witnesses were all by me first carefully examined and cautioned, and each sworn to testify the truth, the whole truth, and nothing but the truth,
445 and the depositions were by me reduced to writing in the presence of each of said witnesses, and from each of their statements, and after carefully reading the same to each of the said witnesses, each subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of forwarding the same with my own hand to the court for which the same is taken.

I still further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have subscribed my name, and caused my notarial seal of office to be hereunto affixed, the 12th day of May, in the year of our Lord one thousand eight hundred and sixty, in the 84th year of the independence of the United States.

EDWIN F. COREY, JUN.,
Notary Public, and ex officio U. S. C.

446 *Testimony A. Noxon.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

Be it remembered, that on this 22d day of June, in the year one thousand eight hundred and sixty, I, John G. Townsend, a commissioner duly appointed by the district court of the United States for the district of Wisconsin, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did cause personally to appear before me, at the office of Palmer & Stark, in the city of Milwaukee, in said district of Wisconsin, Alfred Noxon, to testify on the part of the defendant J. Albert Helfenstein, trustee, in a certain cause depending in the district court of the United States for the said district of Wisconsin, wherein Greene C. Bronson, James T. Soutter, Shepherd Knapp, trustees, are complainants, and the La Crosse and Milwaukee Railroad Company, Selah Chamberlain, J. Albert Helfenstein, trustee, and others, are defendants.

And the said Alfred Noxon, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, I carefully examined the said Alfred Noxon, and he did thereupon depose, say, and testify as follows, to wit:

I am 25 years of age and upward. I reside in Saratoga County, New York State. I am acquainted with a corpoation known as the La Crosse and Milwaukee Railroad Company. I was director of that co., and became so in the fall or winter of 1857, and continued a director in said company till May, 1859. I was a director of said company at the time an agreement was made between Selah Chamberlain, of the one part, and Alfred Noxon, Seth R. Foster, John H. Reynolds, of the second part, and Vose, Livingston & Co. of the third part. Said contract was signed by all the parties thereunto
447 except John H. Reynolds. The agreement was made, consummated, and executed in the city of New York. Said agreement was made on or about the 28th January, 1858. I know of the making of one agreement dated the 28th January, 1858, made between the La Crosse and Mil. Railroad Company and Vose, Livingston & Co.; and also of an agreement of the same date between said company and Greene C. Bronson, James T. Soutter, and Shepherd Knapp. The last-named agreement is the same one which is annexed to the complaint in this action marked Schedule D. The above three agreements were made at or about the same time, and for the purpose of carrying out the same object. The said agreements were made for the purpose of getting rid of an injunction obtained against the road by Vose, Livingston & Co., and to carry out a contract made with Mr. Chamberlain for the completion of the road, and for this purpose to enable us to issue $1,500,000 of bonds, the land grant bond of said road. At the time of making said ag'ts, Stephen Clark was president of said road. All these agreements, and the negotiations leading to them, were made in Albany, New York. The company had an office in the city of New York during the months of Oct., Nov., and Dec., 1857, and Jan'y, 1858. Stephen Clark, D. V. N. Radcliff, Eli Perry, D. E. Wheeler, and myself were directors at that time, took part in the negotiations and consumation of the above agreements, according to the best of my recollection. After the making of the above agreements
448 $1,500,000 of the land grant bonds were issued and negotiated by said company. The bonds were issued within three months after the

making of said agreement. The price of the bonds was the completion of the road from Tomah to La Crosse. There was an agreement made between Mr. Chamberlain and some persons, part of whom were directors of the road, that Chamberlain should realize $45,000 in cash for said bonds. This agreement was not made between Mr. Chamberlain and the company. I do not know that any portion of said bonds were disposed of by the company to any of the directors of said company. They all went to Mr. Chamberlain in payment for the building of the road. There was no other agreement, other than what I have certified to, made among the directors of the company, or any of them, in relation to the disposal of said bonds, or any portion thereof, after the 28th January, 1858. The last $1,500,000 of the land grant bonds were delivered to a committee consisting of Mr. Foster, Eli Perry, and myself, done so at the request of Mr. Chamberlain, and on his order. I am not positive that the above persons composed the committee, but think so. I cannot remember whether all of the bonds were delivered to the committee at one time, but my impression is that they were. The order on which they were delivered was in writing. None of the bonds were actually de-
449 livered to Mr. Chamberlain personally, but were delivered to the committee. I do not know that he ever handled any of them afterwards. The bonds after they were delivered to the committee were sold from time to time by the committee for the account of Mr. Chamberlain. I think all of the bonds were sold through brokers in New York. There was none sold by the committee to any of the directors of said company, as I recollect. These were sold at about 30 cents on the dollar. The average price of the land grant bonds in New York about the time of making the contract with Mr. Chamberlain was about 25 cts. This was during the month preceding the first of February, 1858. The main advance of the bonds was after the 28th Jan'y, 1858, and the average of the market during the months of February, March, and April, 1858, was about 40 cts. on the dollar. I do not know that any of the bonds were purchased by the directors of the company at the sales authorized by the committee. $350,000 of the bonds on hand in Oct., 1857, were paid to Chamberlain on his contract made in Dec., 1857. These bonds came into the hands of Mr. Clark, president, through Mr. Dow. They were paid to Chamberlain on account of a contract to build the road from New Lisbon to the Junction, which contract is dated the 12th Dec., 1857. The committee realized from the sale of the $1,500,000 of the land grant bonds about $450,000 in cash. The money received for the bonds was deposited
450 in the Albany Exchange Bank, for the credit of Mr. Chamberlain, to be paid to him on account of his contract as he produced certificates of the amount of work done thereunder. The reason of delivering the full amount of the bonds at one time was for the purpose of insuring the full completion of the contract, and to avoid annoyance.

A. NOXON.

451 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, John G. Townsend, a commissioner duly appointed by the district court of the United States for the district of Wisconsin, under and by virtue of various acts Congress, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness above named is material and necessary in the cause in the caption of said deposition.

I further certify that the witness voluntarily attended taking said deposition.

I further certify that on the 22d day of June, in the year of our Lord one thousand eight hundred and sixty, I was attended by Cary & Pratt, of coun-

sel for the complainant, and H. L. Palmer and E. L. Buttrick, counsel for the defendant, J. Albert Helfenstein, trustee, and by the said witness, who, of sound mind and lawful age, and the said witness, Alfred Noxon, by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, and the deposition by me reduced to writing, in the presence of the said witness, and from statement, and after carefully reading the same to said witness, subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of enclosing and directing the same with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

I testimony whereof, I have hereunto set my hand, this 21st day of June, in the year of our Lord one thousand eight hundred and sixty.

JOHN G. TOWNSEND, [SEAL.]

United States Commissioner, duly appointed by the District Court of the United States for the District of Wisconsin.

Fees, $3.

452 *Testimony of Stephen Clark.*

UNITED STATES OF AMERICA,

Northern district of New York, city and county of Albany, ss:

Be it remembered, that on this third day of July, in the year one thousand eight hundred and sixty, I, Robert J. Hilton, a commissioner duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and an act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, under and in pursuant to a stipulation in writing entered into and signed by the solicitors for the respective parties and hereto annexed and herewith returned, did call and cause to be and personally appear before me, at my office, at No. 74 State street, in the city of Albany, in the northern district of New York, in the State aforesaid, Stephen Clark, of the city of Albany, N. Y., to testify and the truth to say on the part of the defendant, J. Albert Helfenstein, in a certain suit and matter in controversy now depending and undetermined in the district court of the United States for the district of Wisconsin, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, are complainants, against the La Crosse and Milwaukee Railroad Company, J. Albert Helfenstein, trustee, *et al.*, defendants.

And the said Stephen Clark, being about the age of forty-eight years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, I carefully examined the said Stephen Clark, and he did thereupon depose, say, and testify as follows, to wit: I reside in the city of Albany, New York. I was the president of the La Crosse and Milwaukee Railroad Company from November, A. D. 1857, until April, A. D. 1858, five months and ten days, when I resigned as president and director. I was elected director and appointed president on

or about the same day. The road was then completed to New Lisbon. I made a contract with Mr. Chamberlain to build the road from New Lisbon to Tomah. It was made, I think, in December, A. D. 1857, at Milwaukee. I recollect that I had a difficulty in making it in consequence of an injunction in favor of Vose, Livingston, and others against the company. The payment of this contract was to be made wholly in these land grant bonds of the company, being the first land grant bonds and part of twenty-five thousand bonds. In November, 1857, I received from Prentice Dow in the neighborhood of five hundred and nine thousand dollars of these land grant bonds. I did not receive them all at one time. Dow at first claimed to hold about one hundred and twelve thousand dollars in these bonds for the benefit of the person who built the railroad bridge at Kilbourn City, but they were all subsequently delivered over to me, and of this last amount, I think eighty to one hundred thousand dollars were delivered back again to Dow,
453 who delivered them as agent for the company to this bridge builder. The balance of the whole was in part delivered over to Chamberlain, and the balance on hand at the time I resigned my office as president and director I delivered over to my successor, Mr. Stanton, by direction of the board of directors about the twelfth or 13th day of April, 1858, together with the money of the company then on hand.

Question. What do you know of the execution and delivery of the $1,500,000 of land grant mortgage bonds in A. D. 1858, at Milwaukee?

Answer. I received this amount in bonds, duly executed and signed by the secretary from time to time, about or during the months of February and March, 1858, and delivered them over to the complainants in this action. I understood and believe they subsequently passed into the possession of Mr. Chamberlain, but I do not personally know what became of them. I as president of the company did not dispose of any of these bonds. I know that Eli Perry, of Albany, S. R. Foster, of New York, and Alfred Noxon, of Crescent, in State of New York, gave a guarantee, as I understand it, for the performance of the contract for the construction of the road from Tomah to La Crosse by Chamberlain; this is my impression—I am not certain. I do not know of their negotiation of the bonds for Chamberlain's benefit. I understood that every purchaser of the bonds was to pay for them thirty cents on the dollar, which was to be deposited in the Albany Exchange Bank, and which sum was guaranteed to Chamberlain by this committee. I do not know what control the company exercised over the bonds
454 after their delivery to the master. I do not know what was realized from the sale of the bonds. I don't know of any arrangement or understanding by which the directors, or any of them, were to take these bonds and account to the company or Chamberlain for them at thirty cents on the dollar. I know that there was a good deal of talk of those bonds, and there was a great many said they were willing to take them at thirty cents on the dollar, but what the final arrangement was I cannot state. Vose, Livingston, and others were among those who wanted these bonds, but it was not the directors who wanted them as I know of. I understood that Chamberlain was to be paid for the work done under his contract, as the work progressed, and as its completion was certified from time to time by the engineer employed for the purpose. The bonds were not to be disposed of any faster than the money for them was received, as I understand it.

(The foregoing testimony of this witness was duly objected to by the plaintiffs' counsel, and may be objected to on the trial of this cause in the same manner, as if such objection had been herein specifically stated to the general questions asked of the witness.)

STEPHEN CLARK.

Cross-examined.

It is my impression that there was a committee of the directors appointed by the board to receive these bonds from the trustees, and to dispose of them in accordance with the contract between the company and
455 Chamberlain, and therefore I do not charge myself specially with the matter.

STEPHEN CLARK.

Taken, subscribed, and sworn to before me this 3d day of July, A. D. 1860, at city of Albany, N. Y.

R. J. HILTON, *United States Commissioner for Northern District of New York.*

456 UNITED STATES OF AMERICA,
Northern district of New York, Albany City and County, ss:

I, Robert J. Hilton, of the city of Albany, a commissioner, duly appointed by the district court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress in that case made and provided, do hereby certify that the reason for taking the foregoing depositions of David V. N. Radcliff and Stephen Clark is, and the fact is, that the witnesses reside in the city of Albany, in the State of New York, and more than one hundred miles from the place of trial of this action, and that said deposition and examination of said witnesses were taken by and before, under and pursuant to the stipulation in writing, signed by the solicitors of the respective parties hereto annexed and herewith returned.

I further certify that notification of the time and place of taking said deposition, signed by me, was made out and served on the to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit.

I further certify that on the third day of July, in the year of our Lord one thousand eight hundred and sixty, I was attended by the counsel for the complainant, and also by the counsel of the defendant, J. Albert Helfenstein, and by the aforesaid witnesses, (who were called on part and behalf of said defendant;) that said witnesses were severally of sound mind and lawful age, and were by me severally first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; and the depositions were by me reduced to writing in the presence of the said respective witnesses, and from their respective statements, and after carefully reading the same to the witnesses they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of returning the same to the court for which the same was taken. No notification of the time and place of the taking said depositions, signed by me, was made out and served on the opposite party or their attorney, to be present at the taking of said depositions, and to put interrogatories if he or they might think fit, such notice being issued as per stipulation annexed, and the complainants appeared by counsel on the examination of the witnesses.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this third day of July, in the year of our Lord one thousand eight hundred and sixty, at Albany, New York.

R. J. HILTON, [SEAL.]
United States Commissioner for Northern District of New York in 2d Circuit.

Commissioner's fees for taking and certifying depositions	$5 20
2 witnesses, 1 day each	3 50
Postage to clerk	12
P'd by d'ft	8 82

457 *Stipulation.—Cary & Pratt, and Palmer & Stark.*

United States dist. court, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD Knapp, trustees, *v.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, *et al.* } Stipulation.

It is hereby stipulated between the solicitors for the plaintiff, of the one part, and the solicitors for the defendant J. Albert Helfenstein, trustee, of the other part, that the testimony of H. L. Richards, C. F. Southmayd, S. R. Foster, and such other witnesses as either of the said parties may desire to examine in this cause in the city of New York, may be taken before Edwin F. Corey, a notary public, and , a U. S. court commissioner, on verbal interrogatories commencing on the day of June instant; and that the testimony of Stephen Clark, George H. Luther, Artemus Fish, Stephen H. Alden, D. V. N. Radcliffe, Eli Perry, and such other witnesses as either of said parties may desire to examine in the city of Albany, may be taken before Robert J. Hilton, esq., United States circuit court commissioner, and for the northern district of New York, in the second
458 judical circuit, Albany, commencing on the third day of July, 1860, on verbal interrogatories.

The examination of such witnesses may be continued from day to day until completed, provided the examination of such witnesses in New York and Albany shall be closed by the day of July next; and the testimony so taken shall be reduced to writing, signed and certified in the usual manner of taking depositions, and shall be returned to John M. Miller, clerk of this court, at the city of Milwaukee, duly endorsed and sealed, twenty-four hours' notice of the taking such testimony, at the office of C. U. Patten, 61 Wall st., New York. Testimony to be taken in New York first.

CARY & PRATT, *Solicitors of Compl'ts.*
PALMER & STARK, and
BUTLER, BUTTRICK & COTTRILL,
Sol's for J. H. Helfenstein, trustee.

459 *Testimony D. V. N. Radcliff.*

UNITED STATES OF AMERICA,
Northern district of New York, ss:

Be it remembered, that on this third day of July, in the year of our Lord one thousand eight hundred and sixty, I, Robert J. Hilton, a commissioner duly appointed by the district court of the United States for the northern district of New York and second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and

bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, under and in pursuant to a stipulation in writing enclosed unto and signed by the solicitors for the respective parties hereto annexed, and herewith returned did cause personally to appear before me at my office, at No. 74 State st., in the city of Albany, in the northern district of New York, in the state aforesaid, David V. N. Radcliff, of the city of Albany, New York, to testify on the part of the

in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the district of Wisconsin, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, are complainants against the La Crosse and Milwaukee Railroad Company, J. Albert Helfenstein, trustee, *et al.*, defendants.

And the said David V. N. Radcliff, being about the age of fifty-five years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, I carefully examined the said David V. N. Radcliff, and he did thereupon depose, say, and testify as follows, to wit:

(Edwin L. Buttrick, esq., of Milwaukee, Wisconsin, appeared on the examination as counsel for the defendant J. Albert Helfenstein, and Mr. John A. Whiting, esq., of the city of New York, appeared as counsel for the claimants.)

I reside in the city of Albany, N. Y. I was a director of the La Crosse and Milwaukee Railroad Company. I was appointed director, I think, in October, A. D. 1857, and continued a director of said company until January,

A. D. 1859, when I resigned as a director. I knew of the existence
460 of the mortgage described in the complaint in this action as the first land grant mortgage. I do not know how many bonds had been issued under said mortgage at the time I first became a director in said company.

I do not of my own knowledge know of the contract made between said railroad company and Selah Chamberlain in relation to the building of the road from New Lisbon to Tomah, but have been informed that there was such a contract. I do not know how much was paid on said contract to Chamberlain, or whether in bonds of the company or in cash. I don't know anything of the issue of the second issue of land grant bonds, except on information of my creditors, but understood they were to be guaranteed to Mr. Chamberlain at thirty cents on the dollar, but by whom they were to be guaranteed I do not know. I don't know the particulars of that performance. I do not know that any of these bonds were sold to the directors of said company, but I did understand that the great object was to have them pass into the hands of Mr. Chamberlain, and at the same time have Mr. Chamberlain perform his contract. My impressions now are that they were delivered for Mr. Chamberlain to some one, but I do not know who. I understood they were passed to Mr. Chamberlain, so far as to be within his control

and out of the reach of the directors. The great object was to secure
461 the performance of the contract on the part of Mr. Chamberlain, and that there should be no contingency about it. The idea was that these bonds should be so placed that the proceeds should be applied exclusively to the construction of the road or the fulfilment of Mr. Chamberlain's contract, and I understood that such application of them was made. The great anxiety was to realize thirty per cent. on the bonds. I do not remember who it was that had the control of these bonds, except that it was the president and two or three of the directors. I was not one of them. I had nothing to do with the issuing and negociating of these bonds, except that I thought it was right, and approved of it. I understood

that these bonds were absolutely delivered for the use of Mr. Chamberlain, but I do not know to whom. I think this matter was talked over by the board of directors, and approved of by them.

Question by defendant's counsel. State, if you know, what disposition was made of those bonds, by whom they were disposed of, at what price they were sold, and what became of the proceeds.

Answer. I no not know further than that thirty cents on the dollar was realize on these bonds, and which was the great anxiety of the directors, but I only know this upon information.

Question. State whether any of these bonds were sold or delivered
462 to any of the directors of the company. And if so, to what amount, and to whom were they so sold or delivered?

Answer. I do not know of any.

Question. Do you know of any agreement, arrangement, or understanding among the directors, any or either of them, that the directors should take these bonds, or any portion of them, and account to Mr. Chamberlain for thirty cents on the dollar for the amount said bonds should sell for.

Answer. I never knew of any such understanding or agreement.

Question. Did you receive any of these bonds?

Answer. No; but I bought subsequently $10,000 of these bonds of a broker in New York at thirty-one cents on the dollar, between January and July, A. D. 1858.

Question. Was any report ever made to the board of directors of the company by the person or persons who held these bonds in trust for Mr. Chamberlain, in relation to the disposition of said bonds and the amount and aplication of their proceeds?

Answer. Nothing more than that their entire proceeds had gone to Mr. Chamberlain, but I do not recollect when or by whom said report was made. The road was completed sooner than the time mentioned in the contract by a month or two. I have not now the means of ascertaining the amount Mr. Chamberlain received from the proceeds of said bonds.

463 (The counsel for the claimants duly objected in time to all the foregoing testimony, and it was agreed by the parties that the same may be objected to on the trial of this cause, as if such objections had been herein specifically stated to the several questions asked of this witness.)

D. V. N. RADCLIFF.

Cross-examination.

When you speak of what you understood concerning the action of the directors and Mr. Chamberlain in the foregoing testimony, you speak wholly from hearsay and information, and not from personal knowledge, do you not?

Answer. In some parts I speak from personal knowledge, and as to other parts from hearsay. As to the delivery of the bonds for the use of Mr. Chamberlain, that was spoken of as having been done during a meeting of the board of directors in order to insure a performance of the contract, and all the information I had in relation to these bonds I derived from the officers and directors of the company.

Question. Do you know, or have you any means of information, whether any directors of the company received any of the avails or proceeds of said bonds, or directly or indirectly appropriated the same, or any part thereof, to their own use?

Answer. I have not.

Question. About the time of the negotiation of these bonds to which
464 you refer, what was the value of that class of bonds? I mean the first land grant bonds of said railroad company.

Answer. From twenty to twenty-five cents on the dollar. I now speak of their value immediately before the making and executing of the contract of 28th of January, A. D. 1858.

D. V. N. RADCLIFF.

Taken, subscribed, and sworn to before me on this 3d day of July, A. D. 1860, at city of Albany, N. Y.

R. J. HILTON,
United States Commissioner for northern district of New York.

465 *Affidavit F. Randall.*

U. S. district court, dist. of Wisconsin.

GREENE C. BRONSON *et als.*
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD CO. *et als.*

SOUTH. DIST. OF NEW YORK, *City and county of New York:*

Francis Randall, being duly sworn, says he is counsel in the city of New York for the defendants in this action; that Joseph Marie and Horace Galpen are witnesses material and necessary to said therein, and that said Marie and Galpen reside in the city and State of New York, as deponent is informed and believes.

F. RANDALL.

Subscribed and sworn this 10th day of January, 1861, before me.
GEO. W. MORELL,
U. S. Comm'r south. dist. New York.

466 UNITED STATES OF AMERICA,
southern district of New York, city, county, and State of New York, ss:

Be it remembered, that on the tenth and eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-one, I, George W. Morell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York in the State of New York, and in the 2d circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at the office of C. Palter, No. 61 Wall street, in the city of New York, in the district and State aforesaid, Joseph Marie and Horace Galpen to testify and the truth to say on the part and behalf of the defendants in a certain cause depending in the district court of the United States for the district of Wisconsin, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp are plaintiffs and the La Crosse and Milwaukee Railroad Company *et als.* defendants.

Testimony J. Marie and Horace Galpin.

And the said Joseph Marie, being about the age of thirty years and upwards, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the suit or matter said, was by me carefully examined, and thereupon deposed, testified, and said as follows, to wit:

My name is Joseph Marie; I am thirty years of age and upwards; reside in the city and State of New York; I am a stock and exchange broker in said city, and am of the firm of Marie & Kautz.

Qu. Were you acquainted with the reputed character of the La Crosse and Milwaukee Railroad Company in the winter and spring of 1858 as to its solvency?

(Plaintiffs' counsel objects to the question, as immaterial and incompetent. Answer taken subject to objection.)

467 A. As well as I can recollect, the road was in very bad repute as to solvency, and the state of things was such that brokers were afraid to deal in its stock. The stock had fallen from the early part of 1857, when it was about 80, to 9 and 10 January, 1858.

Qu. Was this condition of the La Crosse company generally known in the winter and spring of 1859 in the city of New York?

(Same objection and same answer.)

An. I think it was; it was so generally known in Wall st., and the public papers made so much mention of it; all business men knew of it as far as I can recollect; everything seemed to be in a very rotton condition.

Qu. How was its reputation in respect of its means to pay its debts?

(Same objection and same answer.)

A. It was very bad; the company had just before paid a dividend, and the question generally asked was, where did the money come from? At that time the company paid interest on its first mortgage bonds, and that was easily run through, because it could afford it, but we could not understand how they paid the interest on the second mortgage bonds.

Qu. Was it known here generally that Mr. Chamberlain had gotten a large judgment against the company and had taken a lease of the road

468 from the company?

(Same objection and same answer.)

An. It was known generally, as it had been published in all the papers and was known soon after the transaction; it was a matter of newspaper comment.

Cross-examination.

I think the terms of the lease were stated in the newspapers; it was generally stated in the newspapers and by the public here that the judgment of Chamberlain was invalid and did not constitute a just claim against the company. The reports which I heard referred to its general condition.

JOSEPH MARIE.

Sworn and subscribed this 10th day of January, 1861, before me.

GEO. W. MORELL,
U. S. Comm'r South. Dist. New York.

Testimony H. Galpen.

And the said Horace Galpen, being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the suit or matter aforesaid, was by me carefully examined, and thereupon deposed, testified, and said as follows, viz:

469 My name is Horace Galpen; I am forty years of age; I reside in the city and State of New York; I am a merchant.

(The plaintiffs' counsel here objected to the reception of the evidence of this witness, on the ground that he is incompetent as a witness and that no order for his examination has been made in this cause.)

Qu. Did you know of the original issue of the land grant bonds of the La Crosse and Milwaukee Railroad Company—I mean of the first issue of 2,500 bonds?

(Plaintiffs' counsel objects to the question as immaterial and incompetent. Answer taken subject to objection.)

A. I did.

Qu. Did you know of any, and if so what, representations as being made by the officers and agents of the company to induce the public to buy these bonds?

(Same objection. Answer subject to objection, as before.)

A. I had numerous conversations with the president and other officers and agents of the company, alone and in the presence of other parties. I was informed by the president in the latter part of 1856 or in the beginning of 1857, prior to the issue of the bonds, that an issue of $2,000,000 only would be made. After some time, and after arrangements, as I understood, had been made or partially completed for the sum of $2,000,000, I was
470 informed that the company would have sufficient means to build the land grant road to the furtherest point northwestardly to which at that time they intended to carry it, and that the issue of $2,000,000 (two millions of dollars) would hardly complete it to that point, but that they had determined to issue $2,500,000 (two and a half millions of dollars) instead of the original $2,000,000 (two millions) as at first contemplated, which sum of $2,500,000 would be amply sufficient; that no further issue of the bonds would be made until after the completion of the branch road from the point at which that portion of the land grant road therein contemplated would terminate to the Mississippi River at La Crosse; that the company had sufficient means then in hand or provided for to build that portion of that road. These assurances and conversations were repeated at different times, and at one time in particular the subject was discussed in my presence between the officers and agents of the company and other persons at their office, in this city, at No. 8 or 10 Wall street. At almost every occasion on which I visited the office of the company for information I saw other persons present making the same inquiries, and the answers, as far as I heard them, were the same tenor as the representations made to me.

Qu. Do you know whether any persons acted on the faith of such
471 representations in the purchase of these bonds?

(Same objection and same answer as before.)

A. I know that upon such representations I was induced to take and purchase and pay to the company the price of several bonds. I also know that upon such representations made to Edward Livermore, of New York City, he was induced to purchase and pay to the company the price of several of these bonds. I would not myself have purchased and paid for any portion of these bonds had I not faith in the statements of the officers and agents of the company, made to me prior to my doing so, that no further issue of these bonds would be made until such time as the road should be completed to the Mississippi. I also know that Edward Livermore acted on the faith of the same representations in purchasing his bonds.

Cross-examination by pl'ffs' counsel.

The several representations which I have here stated are all that I now recollect, and the representations which I have stated as the inducements under which I purchased the bonds are all that I now remember as producing that effect, except such representations as I may have seen published in a circular or circulars of the company. I acquainted myself with the general terms and provisions of the mortgage bonds before purchasing. I re-

472 garded the lands as being a valuable portion of the security. I considered the location and prospective business of the road as affording well-grounded expectations that its revenues would be considerable. I was careful to examine the route, location, connections, and general incidents of the road at that time. I mean by the officers and agents of the road, the president of the road, Mr. Kilbourn, and gentlemen whom he introduced to me as directors and agents. They were persons who were frequently in the office. I do not recollect their names. When they spoke of means in hand and provided for, I enquired what such means were, and they stated that the earnings of the road would be sufficient to furnish a large portion of the means, and the issue of farm mortgage bonds then in hand would furnish a portion, that cash in hand from the proceeds of these farm mortgage bonds would furnish another large portion. This statement I believed to be true, for the reason that I myself had paid to the company a large sum of money for some of these farm mortgage bonds just prior to this time. The way I knew that Mr. Livermore relied on these representations is that I stated to him the representations that I have referred to. He went with me to the office of the company, and the same representations were repeated to him in my
473 presence. He at that time subscribed and paid for a portion of these bonds. Besides the bonds which Mr. Livermore and I took, I knew that Vose, Livingston & Co., John Nicholson, Mr. Brisburn, Mr. Hoppock, Mr. Tucker, and numerous others had taken a large number of the first issue of said bonds, amounting in the aggregate to about $2,000,000, which were daily being issued by the company and were finally issued.

Direct.

Qu. Do you know what was the condition of the La Crosse company in the winter and spring of 1858 as to solvency?

(Plff. counsel objects to the question.)

A. I know that I held about $25,000 of the constructive bonds of the company of an issue made prior to any mortgage except the first mortgages on the eastern division, which I had purchased of and paid to the said company the amount, and that the interest became due by coupons payable the first of January, 1858, at the Broadway Bank, if I remember right; that in December, 1857, I enquired at the office of the officers and agents of the company if money had been provided to meet the interest on those bonds due at that time, and they informed me that the company was wholly unable to pay that interest or any portion of it, that they had no money and were totally with-
474 out credit; that no persons connected with the company were willing to advance the money or to become liable for the same. They stated they did not know when, if ever, the interest would be paid; they had no money and were unable to get it. The coupons were never paid. The insolvency of the company at that time was notorious at that time.

HORACE GALPEN.

Sworn and subscribed this 11th day of January, 1861, before me.

GEO. W. MORELL,
U. S. Comm'r South. Dist. New York.

UNITED STATES OF AMERICA,
Southern district of New York, city, county, and State of New York, ss:

I, George W. Morell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the

United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing depositions are and the fact is that the witnesses are material and necessary in the cause in the caption of said depositions named, and that they live at a greater distance from the place of trial than one hundred miles, to wit, in the city and State of New York.

I further certify that on the tenth and eleventh days of January, in the year of our Lord one thousand eight hundred and sixty-one, the said parties, by counsel and by the said witnesses, who of sound mind and lawful age, and the said witness by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, and the deposition by me reduced to writing in the presence of the said witness, and from statement, and after carefully reading the same to said witness, subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of the same with my own hand the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand this day of January, in the year of our Lord one thousand eight hundred and sixty-one.

[SEAL.] GEO. W. MORELL,

United States Commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit.

476 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of George W. Morell, whose name is subscribed to the preceding depositions and certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same a commissioner duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this fourteenth day of January, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of these United States ———.

[SEAL] KENNETH G. WHITE, *Clerk.*

477 *Testimony of J. M. Lovett.*

UNITED STATES OF AMERICA,
Northern district of New York, city and county of Albany, ss:

Be it remembered, that on this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty, I, Robert J. Hilton, a commissioner duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of

affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and an act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 74 State street, in the city of Albany, in the northern district of New York, in the State aforesaid, Joseph M. Lovett, a resident of the city of Albany, in State of New York, to testify and the truth to say on the part and behalf of the defendants Tracy, Galpin, Livermore, and Crawshay, impleaded in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the district of Wisconsin, in equity, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp,
478 trustees, are complainants, and the La Crosse and Milwaukee Railroad Company and others are defendants.

And said Joseph M. Lovett being about the age of forty-three years, and having been by me first cautioned and sworn to certify the truth and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine him, and he did thereupon depose, testify, and say as follows, viz:

(Hon. A. J. Parker appeared as counsel in behalf of the above complainants, and Hamilton Harris, esq., as counsel for the said defendants, Tracy, Galpin, Livermore, and Crawshay, impleaded, &c.)

I am the cashier of the Albany Exchange Bank. Certain land grant bonds of the La Crosse and Milwaukee Railroad Company, that is to say, four hundred and fifty thousand dollars of said bonds, were sent to me through the express from Selah Chamberlain about the first day of February, A. D. 1858, and I forwarded all of these bonds on or about the second day of February, 1858, put up in nine packages of $15,000 each, addressed to Meigs & Greenleaf, to J. Williams, president of the Metropolitan Bank. They were delivered to Miegs & Greenleaf between February 15 and April 1st, 1858, in the city of New York, upon their paying to Mr. Williams thirty per cent. of the amount of said bonds, or upon the withdrawal of each package they paid in $15,000 to the president of the Metropolitan Bank. This was done pursuant to the order of Alfred Noxon and S. R. Foster, a committee for the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, con-
479 tractor for said company. This sum of $135,000 was placed to the credit of said Selah Chamberlain in the Albany Exchange Bank, and when I was then the cashier. Those were all the bonds that I ever received. I do not remember the number of them. I did not keep a record of them. There was afterwards deposited to the credit of the said Selah Chamberlain $217,526 01, making in all to his credit $352,526 01. This amount was drawn out upon the drafts of said Selah Chamberlain, certified by Lockwood L. Doty, treasurer, and D. V. N. Radcliff, assistant secretary and treasurer of said railroad company. The following are the dates and amount of such drafts, viz:

1858, February 15, paid Express co. charges on those bonds sent to New York	$10 25
1858, May 1, one draft for	93,630 00
" June 1, one draft	121,785 00
" June 3, one draft	59,850 00
" July 1, one draft	77,250 00

The following is substantially the form of the certificate which accompanied each of said drafts and endorsed thereon:

"La Crosse ane Milwaukee R. R. Co.,
"*Treasurer's Office, Milwaukee, May* 1, 1858.

"I certify that the within check for ($93,630) is thirty per cent. of the amount estimated by the chief engineer of this company as due Mr. Selah Chamberlain on his contract in bonds, for work actually performed by him.

"LOCK'D L. DOTY, *Treasurer.*
"D. V. N. RADCLIFF, *Ass't Sec'y.*"

480 The bonds sent to me were all signed by Stephen Clark, president of said railroad company. I do not now recollect who signed them as secretary. (The above testimony, and every part of it, was objected to in due time by the counsel for the complainants, on the ground that the same was immaterial, irrelevant, and incompetant.) After the said bonds were deposited in the Albany Exchange Bank, a Mr. Dow inquired of me if the stock to be delivered with the bonds could be held for a few days to go to New York. I replied I did not know it was material, but it ought to be delivered as early as possible. This all the conversation that I now remember having with Mr. Dow. (The above conversation with Mr. Dow was duly objected to by the counsel of complainants, as hearsay, and also as immaterial, irrelevant, and incompetent.)

Cross-examination by J. M. Lovett.

In the transactions with me no discrimination was made between different bonds and different classes of bonds.

Question. Were these bonds all regarded as being on the same footing?

Answer. Yes, all that I received.

Question. Do you know of any right or priority that any one class of the bonds had over the other?

Answer. No.

481 Question. Was the purpose of any second issue of bonds talked about?

Answer. No.

Question. Do you know that it was the intention to appropriate the money to the building of the railroad to La Crosse, and that the money was advanced on the faith of such understanding?

Answer. I supposed it to be, but do not know.

Question. Did you transact the business with that understanding?

Answer. Yes, I did.

J. M. LOVETT.

Taken, subscribed, and sworn to before me this fifteenth day of December, A. D. 1860, at city of Albany, N. Y.

R. J. HILTON,
United States Commissioner for northern district of New York.

482 United States of America,
Northern district of New York, Albany County and City, ss:

I, Robert J. Hilton, a commissioner duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of

the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States,' passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness Joseph M. Lovett, is a resident of and lives in the city of Albany, in the State of New York, and at a greater distance than one hundred miles from the place of trial of the said action.

I further certify that no notification of the time and place of taking said deposition signed by me was made out and served on the opposite party or their attorney to be present at the taking of the deposition, and to put interrogatories if he or they might think fit, because the said adverse party does not as I know or believe, nor has the said adverse party any agent or attorney known to me within that distance.

I further certify that on the fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty, I was attended by the counsel for the respective parties as aforesaid, and by the said witness who was of sound mind and lawful age, and the said witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth in the cause aforesaid, and the deposition was by me reduced to writing in the presence of the said witness and from his statement, and after carefully reading the same to said witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and returning the same by mail with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.] R. J. HILTON,
United States Commissioner, circuit court of the United States for the northern district of New York, in the second circuit.

Comm. fees, &c.	$6 00
Witnesses' fees	1 50
	7 50

Paid by def't Tracy.

483 *Testimony E. H. Goodrich.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

Be it remembered, that on this twenty-first day of June, in the year one thousand eight hundred and sixty, I, John G Townsend, a commissioner, duly appointed by the district court of the United States for the district of Wisconsin, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did cause personally to appear before me, at the

office of Palmer & Stark, in the city of Milwaukee, in said district, Edwin H. Goodrich, to testify, on the part of the defendants, J. Albert Helfenstein, trustee, in a certain cause depending in the district court of the United States for the district of Wisconsin, wherein Greene C. Bronson, James T. Soutter, Shepherd Knapp, trustees, are complainants, and the La Crosse and Milwaukee Railroad Company, Selah Chamberlain, J. Albert Helfenstein, trustee, and others, defendants.

And the said Edwin H. Goodrich, being about the age of twenty-five years and upwards, having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, I carefully examined the said Edwin H. Goodrich, and he did thereupon depose, say, and testify as follows, to wit:

I have been a director of the La Crosse and Milwaukee Railroad Company. I became a director about the year 1853. I continued to be a director up till April 1st, 1858. During the year 1856 I was secretary of the board, and during the summer of 1857 I was vice-president of the board. The road was completed and put in operation to Portage City in March, 1857.

Question. On the 31st Dec., 1856, had the La Crosse and Mil. Railroad Company constructed any portion of its line of road west of Portage City?

(Objected to by complainants' counsel.)

Answer. There was no road completed at that time (prior to the 31st Dec., 1856.) The company to the best of my knowledge, had not done any work on that portion of the road of the company called the land grant road, except some grubbing and clearing that might have been done in the vicinity of Kilbourn City. The line from Columbus to Portage City was surveyed during the year 1857. The line was located from Madison to Portage City in the summer of 1857. The company, to my knowledge, had not acquired any right of way for their road from Portage City to Prescott up to the 31 Dec., 1856. The road from Portage City to Kilbourn City was con-
484 structed and put in operrtion on the 20th day of August, 1857. The length of road was 17 miles. On the 30 Nov., 1857, we were operating 30 miles of the road west of Portage City. There has been sixty-three miles of the land grant road from Portage City to St. Croix Lake completed that extends from Portage City to Tomah. The road was completed to Tomah in the spring of 1858. I cannot say how much of the road was in operation on the 26 Sep., 1857. Early in the season of 1857 Mr. Chamberlain commenced work on the entire line of the road. Work was done on portion of the line in the La Crosse Valley during that time. There had been a considerable amount of grading done on the road west of Kilbourn City previous to Sep., 1857. Seventy-five per cent. of the earth-work had been done between Kilbourn City and New Lisbon, and there had been 20 per cent. of grading done between the Tomah and La Crosse, and considerable work had been done on the approach to the tunnel. There has been no portion of the land grant road constructed beyond Tomah, nor any work done on it; no right of way has been acquired on the line of the road from Tomah to Prescott. About $90,000 worth of work had been done on the line of the road from Madison to Portage City up to Oct. 1, 1857. All of the work west of Portage City was done by Mr. Chamberlain, except a very small portion that might have been done by Anderson & Dio. The contract with Mr. Chamberlain was made, according to my recollection, during the month of January, 1857. While I was vice-president I had, during the absence of the president, the charge of the construction of the road. I was familiar with the business of the company transacted at the home office. Whilst I was secretary of the company I was in the office and familiar with the business of the company that passed through the office.

EDWIN H. GOODRICH.

Cross-examination.

A preliminary survey of the line from Portage City to La Crosse was made in 1855. The road was at one time surveyed so as to cross the Wisconsin River at Newport, in the summer of 1856. The location at Kilbourn City was fixed upon in the fall of 1856, by commencing work there.

EDWIN H. GOODRICH.

485 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, John G. Townsend, a commissioner duly appointed by the district court of the United States for the district of Wisconsin, under and by virtue of various acts of Congress, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness above named is material and necessary in the cause in the caption of said deposition. I further certify that the witness voluntarily attended. I further certify that on the 21st day of June, 1860, I was attended by Cary & Pratt, of counsel for the complainants, H. L. Palmer and E. L. Buttrick, counsel for the defendant J. Albert Helfenstein, trustee, and by the said witness, who is of sound mind and lawful age, and the said witness, Edwin H. Goodrich, being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, and the deposition being by me reduced to writing in the presence of the said witness and from his statements, and after carefully reading the same to said witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of endorsing and directing the same with my hand to the court for which the same was taken. And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this 21st day of June, 1860.

JOHN G. TOWNSEND. [SEAL.]
United States Commissioner, duly appointed by the district court of the United States for the district of Wisconsin.

Fees $2 50.

486 *Testimony Selah Chamberlain.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

Be it remembered, that on this 28th day of July, A. D. 1860, I, John G. Townsend, a commissioner duly appointed by the district court of the United States for the district of Wisconsin, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of United States," passed September 24th, 1789, did cause personally to appear before me, at the office of Palmer & Stark, in the city of Milwaukee, in said district, to testify on the part of the defendant, J. Albert Helfenstein, trustee, in a certain cause depending in the district court of the United States for the said district of Wisconsin, wherein Greene C. Bronson, James T. Soutter, Shepherd Knapp, trustees, are complainants, and the La Crosse and Milwaukee Railroad Company, Selah Chamberlain, J. Albert Helfenstein, trustee, and others, are defendants.

And the said Selah Chamberlain, being of lawful age, and having
487 been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, I carefully examined the said Selah Chamberlain, and he did thereupon depose, say, and testify as follows, to wit:

I had a contract with the La Crosse Railroad to build said road from the Junction to La Crosse. This contract was dated about the first Jan'y, 1858. The price stipulated in said contract for the construction of said road was $1,500,000 in the land grant bonds of said company. The bonds that I was to receive in payment of said contract were to be issued thereafter. The bonds that I received were actually issued after the date of the said contract. In relation to the selling of the $1,500,000 bonds I made a contract with said company the second day of January, 1858. The exhibit hereto annexed, marked A, is a copy of said contract. I also made a contract in relation to the disposition of said bonds, with Alfred Noxen, S. R. Foster, and Vose, Livingston & Co.; said contract was dated the 28th Jan'y, 1858, and the exhibit hereto annexed, marked B, is a copy of said contract.

Question. Was there any agreement or understanding between you and the officers and directors of the La Crosse and Mil. Railroad Co., by which you were to receive cash instead of the $1,500,000 in bonds for the construction of the road from the Junction to La Crosse? If so, with whom was it made, and what was the agreement?

(Objected to by Mr. Cary, as immaterial and incompetent. An-
488 swer subject to objection.)

Answer. There was an agreement and understanding that there should be a committee who should sell the bonds and pay me 30 per cent., or $450,000 in cash, for completing the work of building the road from the Junction to La Crosse.

Question. Was the contract between yourself, Foster, Noxon, and Vose, Livingston & Co., and dated the 28th January, 1858, of which you have spoken, made in pursuance of that agreement with the railroad co., and for the purpose of carrying it out?

(Objected to by Mr. Cary.)

Answer. The contract of the 28th January, 1858, was made in order to get an injunction dissolved, so as to enable the trustees to issue said bonds, and was then ignored. There was another contract made by myself and the La Crosse and Milwaukee Railroad Company, by which Noxon, Alden, and J. H. Reynolds were constituted a committee, whereby said bonds were to be sold at thirty cents on the dollar, and the money to be deposited to my credit in the Exchange Bank of Albany. The contract last mentioned was made, I believe, on the 2d day of January, 1858. Mr. Noxon at that time was a director of the company; he continued a director till the next annual election. Foster was not a director at that time. I received $450,000 of said bonds and placed them in the Exchange Bank of Albany,
in accordance with said contract, the balance of the bonds never
489 came into my hands. I never received them. The remainder of the bonds were disposed of by the committee. I do not know of my own knowledge whether any of the directors of said company had any of said bonds. I have been informed by some of the directors that portions of said bonds were received by some of the directors of said company. I was informed by Mr. Noxon of the disposal of some of the bonds to the directors; he said Stephen Clark received 50 or 60 of said bonds, George W. Luther received some, Eli Perry received some, Mr. Shear received some, Clark, Luther, Perry, and Shear were directors of said company, at the time they received said bonds. I was told that said directors took said bonds at 30 cents on the dollar. The contract dated the 1st January, 1858, is the con-

tract made for the construction of said road. Exhibit "C," hereto annexed, is a copy of said contract.

Question. Did you give a receipt to the company for the $1,500,000 bonds?

I gave a receipt for $1,500,000 of these bonds in New York, the receipt for the balance was given by me in Milwaukee at the time I gave the last receipt. I did not receive any of the bonds, and none of said bonds ever came into my hands. Mr. Clark, the president of the road, and Mr. Noxon came to Milwaukee about the 11th of March, 1858, and informed me that Vose, Livingston & Co. and other parties in
490 New York were about getting out an injunction and legal proceeding to attach the bonds in the hands of the committee or in the Exchange Bank of Albany and requested me to sign a receipt for the balance of the bonds not receipted for in New York and that they would see they were sold, and that my 30 per cent. should be placed to my credit in the Exchange Bank of Albany, as per form of contract heretofore mentioned, and dated 2d January, 1858, or if it should become necessary to prevent the money received from the sale and paid down from being attached, they would keep it and pay it out on my estimates, according to the form of the construction contract dated the 1st of January, 1858. The following is a copy of the receipt given by me.

"Received Milwaukee, March 11, 1858, of the La Crosse and Milwaukee Railroad Company, ten hundred and fifty bonds of the said company of the description mentioned in a contract made and bearing date the 1st day of January, A. D. 1858, by and between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, amounting to one million and fifty thousand dollars, being, with a payment heretofore made, in full payment of the amount of one million five hundred thousand dollars required to be paid by said covenant to said Chamberlain, by the contract above mentioned."

Direct examination closed.

(The complainants' counsel object to the foregoing testimony.)
491 First. Because the witness is incompetent to testify in this cause.
Second. The testimony is incompetent, irrelevant, and immaterial.
Third. Objects to so much of said testimony as is hearsay, or appears to be hearsay.
Fourth. He objects to so much of said testimony as purports to state the substance of written contracts.

These objections were made in due time, and for the sake of convenience are entered here, but are to have the same effect as if entered during the testimony and repeated at every question.

Cross-examination.

I have no knowledge who, at present, are the holders of said $1,500,000 of bonds, and what was the consideration paid for them by said holders.

S. CHAMBERLAIN.

EXHIBIT A,

Referred to and mentioned in the deposition of Selah Chamberlain hereto annexed.

This agreement, made this second day of January, 1858, between Selah Chamberlain of the first part and the La Crosse and Milwaukee Railroad Company of the second part, witnesseth:

First. That the party of the first part hereby covenants and agrees that upon the receiving from the party of the second part land grant bonds and privileged stock to the amount of one million five hundred thousand dollars each, under a contract between the parties hereto, bearing date Jan-
492 uary 1st, 1858, the said party of the first part will deposit all of said bonds and all of said privileged stock in the Albany Exchange Bank, as security for the faithful performance of the said contract of January 1st, 1858, to be performed by the said Chamberlain. Said bonds and stock are to be held by said bank and disposed of and negotiated as hereinafter provided.

Second. Alfred Noxon, of Crescent, Saratoga County, Stephen H. Alden, and John H. Reynolds, of Albany, are hereby appointed and agreed upon as a committee to negotiate said bonds and privileged stock at a price not less than thirty per cent. upon the par value of said bonds, and they are authorized and required to sell and negotiate the same as soon as practicable for the purpose of providing money for the completion of the road under the aforesaid contract of January 1st, 1858. The money realized upon the sale of said bonds and stock to the amount of thirty per cent. upon the par value thereof, is to be deposited in the Albany Exchange Bank to the credit of said Chamberlain, as a special deposit, and a certificate of the treasurer of the La Crosse and Milwaukee Railroad Company to the effect that the amount of the check drawn is due to the said Chamberlain for work actually done under the said contract of January 1st, 1858.

Third. For the purpose of enabling the said Noxon, Alden, and Reynolds, or a majority of them, to make sale of said bonds and stock, the said
493 Albany Exchange Bank is authorized and directed from time to time to deliver over to said Noxon, Alden, and Reynolds, upon their request, and take their receipt for the same, so many of said bonds, and so much stock as they may desire to sell and negotiate at any particular time, not exceeding at any one delivery bonds and stock each to amount $200,000, and upon any such delivery having been made the said bank shall not make any further delivery of bonds or stock to such committee until the proceeds of the amount previously delivered to the amount of 30 per cent. upon the par value of said bonds shall have been deposited in said bank to the credit of said Chamberlain as aforesaid.

Fourth. All interest that may be allowed by the Albany Exchange Bank upon the deposits made as hereinbefore specified, shall belong to said Chamberlain, and be passed to his credit in said bank, to be drawn in the same manner as the other money so deposited to his credit.

Fifth. In case said committee shall be unable to sell the said bonds and stock at the rates aforesaid, and provide the funds to enable said Chamberlain to meet the monthly estimates for work done under the contract of January 1, 1858, said Chamberlain shall not be held liable for damages for the non-completion of the work provided to be done by the time mentioned
494 in said contract of January 1, 1858; and in case of inability to negotiate said bonds upon the terms aforesaid, and provided the money to be raised thereon, no claim for damages for such failure shall be made by Chamberlain against said party of the second part.

Sixth. And it is further agreed that if the committee aforesaid shall be unable to negotiate said bonds and stock so as to enable the said Chamberlain to perform the contract of January 1st, 1858, all the bonds and stock conveyed and delivered is to be surrendered to the party of the second part, and this agreement and that of January 1, 1858, is to cease and determine; and in case a portion of said bonds and stock is negotiated under the agreement, and it, for any sufficient reason becomes impossible to negotiate the ballance to enable said work to progress, then in that case this

agreement and that of January 1, 1858, is to cease and determine, and the ballance of said bonds and stock not negotiated is to be surrendered to the party of the second part; and in case this contract and that January 1, 1858, ceases to be of force by reason of any of the contingencies aforesaid, then each party is remitted to his original rights in all respects as if this contract, and that of January 1, 1858, had not been made.

Seventh. It is understood that the bonds and stock mentioned in the foregoing contract are together to be regarded for the purposes of this contract of the par value of $1,500,000 00 said bonds and stock being
495 connected together so that one bond of $1,000 is annexed to a certificate of stock of $1,000, and together constitute a par value of $1,000, and no more.

In witness whereof, the said party of the first part has hereto set his hand and seal the day and year above written, and the said party of the second part has caused its corporate seal to be hereto affixed, and these presents to be attested by the signature of its president, the day and year above written.

It is hereby expressly understood that the said bonds are to be sold with the accrued and accruing interest to the purchaser, and without any charge or commission charged or chargeable to said Chamberlain.

S. CHAMBERLAIN.

La Crosse and Milwaukee Railroad Company, by—

STEPHEN CLARK, *Pres't.*

EXHIBIT B.

Referred to and mentioned in the deposition of Selah Chamberlain hereto annexed.

An agreement, made the twenty-eighth day of January, one thousand eight hundred and fifty eight, between Selah Chamberlain of the first part, Alfred Noxon, Seth R. Foster, and John H. Reynolds of the second part, and Vase, Livingston & Co. of the third part.

Whereas the said Selah Chamberlain has contracted with the La Crosse and Milwaukee Railroad Company to complete the railroad of said company from the point known as the "Junction" to La Crosse, being a dis-
496 tance of forty-four miles or thereabouts, and to receive in payment therefor fifteen hundred bonds for one thousand dollars each of the said company, known of the land grant bonds issued under and in pursuance of their mortgage or deed of trust, bearing date December 31, 1856, as modified by an instrument bearing even date herewith, and the said party of the second part have guaranteed to the said company the performance of such contract, and the said fifteen hundred bonds have been simultaneously with the extention hereof, delivered over to said Chamberlain by said company in advance of the completion of his said contract. And whereas the said Vase, Livingston & Co. are holders of a large amount of the land grant bonds of said company heretofore issued under the above-mentioned mortgage, and they having heretofore procured, and having in force an injunction against said company restraining any further issue of such land grant bonds, upon the ground of apprehended improvidence or misuse in the application of said bonds or their proceeds have simultaneously herewith consented to the dissolution of such injunction upon certain terms, in which terms is embraced the condition that the completion of such road to La Crosse shall be secured in the manner herein provided, with a view of maintaining and strengthing the security of said Vase, Livingston & Co. for the land grant bonds they then held:

Now the said parties agree as follows viz: That simultaneously
497 herewith the said fifteen hundred land grant bonds shall be deposited by said Chamberlain with Joseph M. Lovett, cashier of the Albany Exchange Bank, to be held by him in trust to ensure to the said party of the second and third parts, respectively, the performance of his said contract for completing said road from the Junction to La Crosse; and the said fifteen hundred bonds shall be held by said Lovett upon condition that the same shall be parted with by him no faster than by paying out or delivering over the same to said Chamberlain from time to time in proportion to the progress made by him in executing his said contract for completing said road from the Junction to La Crosse; and then only upon the certificate of the treasurer and assistant secretary of said company, stating that such proportion of the work has been executed and the amount earned thereby: Provided, however, that if the said Chamberlain or the parties interested in said bonds, shall desire to make sale of any of such bonds from the time when the same would be delivered to said Chamberlain in pursuance of the provisions hereinbefore contained, such sale may be made provided the price shall not be less than sixty per cent. of the par value of such bonds, and that the said price shall be received by the said Lovett in money, and be held by him in lieu of the bonds so sold, upon the like trusts and
498 conditions, and be parted with to the said Chamberlain or his assigns at the like time and upon the like conditions as above provided in respect of such bonds, and not otherwise, it being understood that after these shall have been provided, in all four hundred and fifty thousand dollars, subject to be drawn for by said Chamberlain from time to time as his contract is completed—the ballance of such proceeds shall stand in the hands of said Lovett, cashier, to the credit of the said parties of the second part, subject to be drawn for in like proportionate installments; but in case all of said bonds shall have been sold and the proceeds deposited as above provided, the last-mentioned portion standing to the credit of the parties of the second part may be withdrawn at the expiration of sixty days from the time the last sale shall have been completed.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

SELAH CHAMBERLAIN. [L. S.]
A. NOXON. [L. S.]
S. R. FOSTER. [L. S.]
VASE, LIVINGSTON & CO. [L. S.]

499 *La Crosse and Milwaukee land grant bonds sold.*

1858.

Feb'y	4	$7,000	at 40	per cent.,	Noxon and Foster.
	6	6,000	40	do.	do.
	8	10,000	40½	do.	do.
		7,000	40¼	do.	do.
	9	2,000	40	do.	do.
	10	1,000	40	do.	do.
		10,000	40⅝	do.	do.
		18,000	40½	do.	do.
		7,000	40	do.	do.
	11	23,000	40	do.	do.
	19	1,000	36¾	do.	do.
		2,000	36½	do.	do.
		1,000	37	do.	do.
		1,000	35	do.	do.

Feb'y	24	13,000	37½ per cent.,	Noxon and Foster.
		17,000	38 do.	do.
		7,000	39 do.	do.
	25	4,000	37½ do.	do.
		5,000	38 do.	do.
		5,000	37½ do.	do.
		5,000	36½ do.	do.
		10,000	36 do.	do.
		5,000	36 do.	do.
		17,000	37½ do.	do.
	26	15,000	37 do.	do.
	27	10,000	37 do.	do.
March	1	19,000	38 do.	do.
	6	2,000	35¼ do.	acc. A. Noxon.
500	18	1,000	39 do.	do.
	19	4,000	38½ do.	do.
	31	25,000	30 do.	do.
May	3	10,000	32¾ do.	do.
	5	5,000	32 do.	do.
		5,000	31⅞ do.	do.
	7	3,000	31¾ do.	do.
	10	15,000	31¾ do.	do.
	11	5,000	31¾ do.	do.
	29	5,000	33 do.	do.
		5,000	33½ do.	do.
		5,000	33¼ do.	do.
		5,000	33¾ do.	do.
		$323,000		

Received Feb'y 4th, 1858, from A. Noxon:

No. 2150 to 2200		$51,000
2016	2024	9,000
2035	2044	10,000
2084	2094	11,000
2115	2118	4,000
2095	2099	5,000
2057, 2058, 1925, 1928, 1930, 1929, 1948, 2004, 1908	} 10,000 in all	100,000

Received Feb'y 27th, 1858, from A. Noxon:

No. 3071 to 3100		30,000

Bought per ac. A. Noxon:

1858.		
April	19	$5,000 at 31½
	20	4,000 32
	21	21,000 33
In all		30,000

Ballance received from Noxon & Foster, part of them through the Metropolitan Bank, but the numbers of the bonds we find no record of.

CHAS. A. MEIGS.

501 "SCHEDULE A."

At the taking of depositions between Greene C. Bronson *et als.*, complain-

ants, and the La Crosse and Milwaukee Railroad company *et als.*, defendants, this paper writing was produced and shown to Charles A. Meigs, and by him deposed unto at the time of his examination before me.

GEO. W. MORELL,
U. S. Commissioner, South. Dist. New York.

Affidavit F. Randall.

U. S. district court, dist. of Wisconsin.

GREENE C. BRONSON *et als.*
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, *et als.*

SOUTH. DIST. OF NEW YORK, *city and county of New York, ss:*

Francis Randall, being duly sworn, says he is counsel in the city of New York for the defendants in this action; that Charles A. Meigs is a witness material and necessary to said defendants therein, and, as the deponent is informed and believes, said Meigs resides in the city of Brooklyn and State of New York.

F. RANDALL.

Subscribed and sworn this 24th day November, 1860, before me.

GEO. W. MORELL,
U. S. Commissioner, South. Dist. New York.

502 UNITED STATES OF AMERICA,
Southern district of New York, city, county and State of New York, ss:

Be it remembered, that on this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and sixty, I, George W. Morell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the State of New York, and in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at the office of C. M. Potter, No. 61 Wall street, in the city of New York, in the district and State aforesaid, Charles A. Meigs, to testify on the part of the defendants, in a certain suit or matter of controversy now depending and undetermined in the district of Wisconsin, wherein Greene C. Bronson, Shepherd Knapp, and James T. Soutter are complainants and the La Crosse and Milwaukee Railroad Company are defendants.

And the said Charles A. Meigs, being about the age of forty-five years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the suit or matter aforesaid, was by me carefully examined and thereupon deposed, testified, and said as follows, viz: My name is Charles A. Meigs; I am forty-five years of age. I reside in the city of Brooklyn and State of New York. I am a broker, buying and selling stocks and bonds on commission in the city of New York; I have been in that business for several years; I have examined printed lists of the sales at the stock board in New York, which I have on file and now refer to.

Qu. What was the price of the land grant bonds of the La Crosse and Milwaukee Railroad Company in the month of February, March, April, May, and June, 1858?

(The counsel for the plaintiff objects to the question, as irrelevant, and incompetent testimony; taken subject to objection.)

An. In the month of February, 1858, these bonds sold from 34 to
503 41 per cent.; in March from 35 to 39 per cent; in April from 30½ to 35 per cent.; in May from 31 to34½; and in June from 30 to 33 per cent.

The firm of Meigs & Greenleaf, of which I am a member, have dealt in the bonds referred to more or less for several years. We did in 1858. We have so dealt since the bonds came into the market until this time.

Qu. Did you, in the months of February, March, April, and May, 1858, sell any land grant bonds of the La Crosse and Milwaukee Railroad Company on account of Mr. Alfred Noxen?

(Plaintiffs' counsel objects to the question, on same grounds as before.)

An. We did.

Qu. Can you give the numbers of the bonds so sold for Mr. Noxon, or of any of them? If so, state the same.

(Plaintiffs' counsel objects to question as before.)

A. I can give the numbers of some but not of all of them. The Schedule "A," hereto annexed, shows our transactions in these bonds on account of Mr. Noxon and Messrs. Noxon & Foster in the period mentioned, and the numbers of the bonds so far as we have any record of them. Mr. Noxon was dealing largely in these bonds, buying and selling them, and speculating in them.

Being cross-examined by the plaintiffs' counsel he saith:

These bonds were largely dealt in at that time; they were in very active demand; the dealers and purchasers were numerous; the purchasers were confined to the city of New York. We received orders from all parts of the country to buy and sell them. We dealt very largely in them; were among the heaviest dealers. They were much talked about, and regarded as having a large ultimate value. I have no recollection of any distinction being made as to the different issues; no distinction was made and no discrimination was made as to particular numbers; they were regarded as standing all alike; they were regarded as equally valid and legitimate. I never heard of the modified trust deed, so called. I never heard as to what use the company made of their bonds.

(To all of which testimony or cross-examination the defendants' counsel objected, as irrelevant, and immaterial.)

CHARLES A. MEIGS.

Sworn and subscribed this 24th day of November, 1860, before me.

GEO. W. MORELL,
U. S. Commissioner, South. Dist. New York.

504 UNITED STATES OF AMERICA,
Southern district of New York, city, county and State of New York, ss:

I, George W. Morell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act en-

titled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness is material and necessary in the cause in the caption of said deposition named, and that he lives at a greater distance from the place of trial than one hundred miles, to wit, in the city of Brooklyn and State of New York.

I further certify that on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and sixty, the said parties, by counsel, and the said witness attended before me at the office aforesaid, and the said witness being of sound mind and lawful age, and having been by me first duly examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, the said deposition was by me reduced to writing in presence of the said witness, and from his statements, and having been by me carefully read to the said witness, was subscribed by the said witness in my presence; that I have retained the said deposition in my possession for the purpose of sealing up, directing, and marking the same with my own hand to the clerk of the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named; nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fifth.

[SEAL.] GEORGE W. MORELL,

United States Commissioner, duly appointed by the circuit court of the U. S. for the southern district of New York in the said circuit.

Comm's fees, $9 15.

505 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of George W. Morell, whose name is subscribed to the preceeding deposition and certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a commissioner duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court this twenty-eighth day of November, in the year of of our Lord one thousand eight hundred and sixty, and of the independence of these United States

KENNETH G. WHITE, *Clerk.*

506 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America to Alexander Spaulding, esq., New York City, greeting:

[SEAL.] Know ye, that in confidence of your prudence and fidelity, you have been appointed and by these presents you, or any one or more of you, are invested with full power and authority to examine Seth R. Foster and George H. Broadhead on their corporal oaths, as witnesses in a cause depending in the district court of the United States for the district of Wisconsin, wherein Green C. Bronson, James T. Soutter, and Shepherd Knapp, are

complainants, and La Crosse and Milwaukee Railroad Company, J. Albert Helfenstein, *et al.*, are defendants, on the part of the defendant Helfenstein, upon the interrogatories annexed to this commission; and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed by you for that purpose, do cause the said Seth R. Foster and George Broadhead to come before you, and then and there examine them on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the said district court of the United States before the judge thereof, with all convenient speed.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin aforesaid, in the city of Milwaukee, in said district, this thirteenth day of July, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fifth.

J. M. MILLER, *Clerk.*

The execution of this commission appears from the return hereto annexed, August 7th, 1860.

ALEXANDER SPAULDING, *Commissioner.*

507 *Rules.*

On the receipt of the commission made out as aforesaid, by any one of the commissioners named, he shall give notice to the other commissioners named therein of the time and place of taking the depositions, if possible, and if any of the commissioners are absent at the execution of said commission, any one or more present may proceed to execute the same, (unless otherwise expressly directed therein,) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reasons for their not being so notified.

The persons to whom such commission shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same, as follows:

First. They, or any of them, shall publicly administer an oath to the witnesses named in the commission, that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth and nothing but the truth.

Second. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall, in like manner, be subscribed by the witness proving the same. (This section must be understood to refer to such papers as can be produced upon the examination.) If the paper referred to be a record not subject to the control of the party or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial, separate from the commission.

Fourth. The commissioner or commissioners shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commissions, upon which the return shall be endorsed, and shall close them up under their or his seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return the same by mail, they, or he, shall immediately deposit the packet so directed in the nearest post office.

Sixth. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to said agent.

508 District court of the United States, district of Wisconsin.

GREEN C. BRONSON, JAMES T. SOUTTER, AND SHEPherd Knapp, trustees, &c.,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Donald D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Kretzger, Frederick Linde, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, and Moses M. Davis.

On motion of Palmer & Stark and Butler, Buttrick & Cottrill, solicitors for defendant J. Albert Helfenstein, trustee, it is ordered that a commission issue to Alexander Spaulding, of the city New York, councellor-at-law to take the testimony of Seth R. Foster, and George H. Broadhead, of New York, witnesses to be produced, sworn, and examined on behalf of the said defendant, J. Albert Helfeinstein, trustee, upon interrogatories to be annexed to such commission, and that such commission be returned
509 by mail to John M. Miller, esq., clerk of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, Wisconsin, and that the said complainants be at liberty to join in such commission.

Milwaukee, July 18, 1860.

PALMER & STARK, and
BUTLER, BUTTRICK & COTTRILL.
Sol'rs for def't J. A. Helfenstein.

Interrogatories to be administered to Seth R. Foster, a witness to be produced, sworn, and examined on the part and behalf of J. Albert Helfenstein, trustee, one of the defendants in a certain cause now pending in the district court of the United States for the district of Wisconsin, against him and others, wherein Green C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, are complainants, before Alexander Spaulding, commissioner, under and by virtue of a commission hereto annexed.

First interrogatory. What is your name, age, and occupation, and where do you now reside?

Second interrogatory. Do you know the parties, complainants and defendants in the title of these interrogatories, or either and which of them, and how long have you them, or either and which of them?

Third interrogatory. Do you know Stephen Clark, Alfred Noxon,
510 Eli Perry, George W. Luther, D. V. N. Radcliff, Artemus Fish, D. E. Wheeler, or either, and which of them, and how long have you known them, or either and which of them?

Fourth interrogatory. Was you ever a director of the La Crosse and Milwaukee Railroad Company, one of the defendants named in the title of these interrogatories? If yea, when did you become such director, and how long did you continue to be, and when did you cease to be such director?

Fifth interrogatory. When you became a director of the La Crosse and Milwaukee Railroad Company, what other persons residing in said State of New York were directors of said company, and while you continued to be a director of said company what other persons residing in said State of New York were and continued to be directors of said company, and who was the president of the said company?

Sixth interrogatory. State whether a contract in writing was entered into by and between Selah Chamberlain, one of the defendants named in the title of interrogatories of the first part, and Alfred Noxon, John H. Reynold, and yourself, or either and which of the last-named persons, of the second part, and Vose, Livingston & Co. of the third part, bearing date on or about the 28th day of January, A. D. 1858, in relation to the disposal of fifteen hundred thousand dollars of land grant bonds of the La Crosse and Milwaukee Railroad Company, issued or countersigned and registered after that date? By whom was said contract executed, and when, and what
501 was the date thereof, and when was it in fact executed? Is the said contract or a duplicate thereof in your possession? Annex a copy of the said contract to your answer to these interrogatories if in your possession, or under your control, and if the same is not in your or under your control, state the contents thereof fully.

Seventh interrogatory. When were the fifteen hundred thousand dollars of said grant bonds last issued by the La Crosse and Milwaukee Railroad Company, being those issued after the 28th day of January, A. D. 1858, actually issued and delivered by the said company? By what officer of the company were they delivered, and to whom were they actually delivered? Were any of said bonds delivered to or deposited with Joseph M. Levitt, cashier of the Albany Exchange Bank? If yea, where, at what times, and in what sums, and by whom were such bonds, or any? What amount or amounts thereof delivered to or deposited with the said Levitt, and under what arrangement or agreement? And for what purpose were they so deposited or delivered?

Eighth interrogatory. Were any of the said bonds so delivered to or deposited with the said Joseph M. Levitt, afterwards disposed of by him? If yea, when, where, to whom, and at what price were such bons disposed of by said Levitt?

512 Ninth interrogatory. Were any of the said bonds so delivered to or deposited with the said Levitt afterwards, and when, withdrawn from him? If yea, by whom, at what time or times, when, in what sums in detail and what sum in the aggregate of said bonds were so withdrawn from said Levitt, how were they disposed of, by whom and to whom were such bonds or any or either of them sold or delivered, and at what price and for what purpose, and what became of the proceeds or price thereof, or of any thereof?

Tenth interrogatory. Were any of said bonds described in the seventh interrogatory sold or delivered to Alfred Noxon, and did the said Alfred Noxon receive the whole or any, and what, part of the proceeds of said bonds or any or either of them, were any of the said bonds delivered to the said Alfred Noxon by the said Joseph M. Levett, or by any other, and what
513 other person? Were any of the said bonds, and what amount or amounts thereof sold, bartered, exchanged, or otherwise disposed of by the said Alfred Noxon? If yea, what amounts of said bonds were disposed of by the said Noxon, and to whom, at what time or times, for what

purpose and at what price, and for what consideration were such bonds, or any or either of them, sold, delivered, or disposed of by the said Noxon, and whether he received any and what part of the proceeds thereof, and what disposition did the said Noxon make of the proceeds of the said bonds, and every part thereof?

Eleventh interrogatory. Were any of the said bonds sold or delivered to the said D. V. N. Radcliff, Eli Perry, Stephen Clark, A. C. Gunnison, D. E. Wheeler, Artemus Fish, and George W. Luther, or any or either of them? If yea, when, where, by whom, and to which of the persons named in this interrogatory were any of such bonds sold or delivered, for what purpose and for what consideration were such bonds (if any,) sold to the said persons, or any or either of them, and what disposition was made of the proceeds thereof, and whether the said persons named in this interrogatory, or any or either of them, and which of them, received any part of the proceeds of the said bonds?

514 Twelfth interrogatory. Were any of the said bonds so delivered deposited with the said Joseph M. Levett, or any of the fifteen hundred thousand dollars of bonds, in these interrogatories described, afterwards withdrawn from such deposit, or received by you or by your order or delivered to you by the said Levett or any other person? If yea, when and from whom did you receive such bonds, or any of them, in what amounts and for what purpose did you receive them or any of them, what disposition did you make of such of said bonds as you so received? Did you sell them, or any and what amount of them, or cause or procure them or any and what amounts of them to be sold? If yea, to whom did you sell said bonds, or any of them or cause them to be sold, and for what price or prices? State whether you caused any of such bonds to be sold by or through any and what broker or brokers, and what did you do with and to whom pay the proceeds thereof, and on what account, and whether you retained any and what part of the proceeds of any of such bonds sold or disposed of by you or by your order or directions?

Thirteenth interrogatory. Do you know of any arrangement, agreement, or understanding, made, entered into, or had by or between any of the directors of the La Crosse and Milwaukee Railroad Company, and which of them, with each other or with any other and what other persons in or about or after the month of January, 1858, or at any other time, and when, by

515 which any of the directors of the said company were to take, or have, or receive the said fifteen hundred thousand dollars of the land grant bonds (so called) of the said La Crosse and Milwaukee Railroad Company, issued or countersigned and registered in and after the month of January, 1858, or any, and how many, of the said bonds, and what amount or amounts thereof? If yea, when, where, and by whom and with whom was such arrangement, agreement, or understanding made, entered into or had? What were the terms of such arrangement, agreement or understanding, in detail? State all the circumstances attending the making of the same, and who were present when it was made, and who were to have such bonds, what directors of said company were to have such bonds, or any and what amount thereof each of such directors was to have, and at what price?

Fourteenth interrogatory. Do you know whether any of the bonds of the La Crosse and Milwaukee Railroad Company described in the last preceding interrogatory were, either directly, or indirectly, sold or delivered to or for any person who at the time of such sale was a director of said company, or for the account of or for the benefit of any such director of said company? If yea, by whom, and to or for whom, or to or for whose benefit were such bonds, or any of them, sold and delivered, at what time or times, what amount or amounts thereof, and at what price or prices?

516 Fifteenth interrogatory. Do you know of any arrangement, agreement, or understanding between D. V. N. Radcliff and any other and what other person or persons, that he, the said D. V. N. Radcliff, should have or receive any of the said bonds of the said La Crosse and Milwaukee Railroad Company, described in the thirteenth interrogatory? If yea, when such arrangement, agreement, or understanding made or had by the said D. V. N. Radcliffe, and with whom, and what were the terms thereof, what amount of said bonds was the said Radcliffe to have and at what price and upon what terms were any such bonds delivered to the said Radcliffe, and when, by whom, for what purpose, and if sold to him at what price?

Sixteenth interrogatory. State whether the said D. V. N. Radcliffe did not some time during the year 1858, or at any other and what other time, have an agreement or understanding with the other directors of the said La Crosse and Milwaukee Railroad Company, or some or one and which of them, or with some or one and what officer or officers, agent or agents of said company, by which the said Radcliffe was to become the purchaser of or was to have or receive one hundred thousand dollars or some other and what other amount of the bonds of the said La Crosse and Milwaukee Railroad Company described in the thirteenth interrogatory, at any and what price, or for any and what consideration, and whether the said Radcliffe did or did not sell his interest in said agreement or understanding or in
517 or to the bonds he was to have or receive thereby, to yourself or Alfred Noxon or Stephen H. Alden or some other and what other person, for, and receive in payment therefor, eight of the bonds of the said company for one thousand dollars each, or for any and what other sum, payable in bonds of the said company, or in any other, and what other, manner?

Lastly. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth *forth* the matters fully and at large in your answer.

PALMER & STARK, and
BUTLER, BUTTRICK & COTTRILL,
Sol's for the def't Helfenstein.

518 Interrogatories to be administered to George H. Broadhead, a witness to be produced, sworn and examined on the part and behalf of J. Albert Helfenstein, trustee, one of the defendants in a certain cause now pending in the district court of the United States for the district of Wisconsin, against him and others, wherein Green C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, were complainants, before Alexander Spaulding, commissioner, and by virtue of a commission hereto annexed.

First interrogatory. What is your name, age, and occupation, and where do you now reside?

Second interrogatory. Do you know the parties, complainants and defendants, in the title of these interrogatories named, or any or either and which of them, and how long have you known them or either and which of them?

Third interrogatory. Are you connected with or employed by the board of brokers of the city of New York? If yea, how long have you been connected with or employed by such board, and in what capacity?

Fourth interrogatory. Do you know or can you tell at what prices the land grant bonds, so called, issued by the La Crosse and Milwaukee Railroad in the year 1857 and 1858, and countersigned by the said complainants, as trustees, were worth in market in New York during the several
519 months from October 1st, 1857, to July 31, 1858, both inclusive, or

what such bonds sold for at the brokers' board or stock exchange in New York during such months? If yea, state particularly your means of information, whether you was present at such sales, whether you kept any and what record of such sales, or whether any record thereof was kept under your direction, and whether you now have access to such record?

Fifth interrogatory. Were any of the bonds of the said La Crosse and Milwaukee Railroad Company, commonly called land grant bonds, secured by mortgage or trust deed executed by said company to Green C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees, and countersigned by the said Green C. Bronson, James T. Soutter, and Shepherd Knapp, on or after the 29th day of January, A. D. 1858, for one thousand dollars each, numbered from No. 2501 to No. 3800, both inclusive, or any of said bonds of such company for $500 each, numbered from number one to number one hundred, both inclusive, sold at the brokers' board in New York from the 29th day of January, 1858, to the 31 July, 1858, both inclusive? If yea, when were they sold, by whom, to whom, in what amounts, and at what prices? and annex to your answer to these interrogatories a statement of each day's sales, between the dates last aforesaid, showing the amount of bonds embraced in each transaction, the numbers of such bonds, the par value of such bonds, by whom and to whom sold, and the price at
520 which each parcel thereof was so sold, and state what knowledge you have of the matters embraced in your answer to this interrogatory, and your means of information in relation thereto.

Sixth interrogatory. What was the market value of the land grant bonds of the La Crosse and Milwaukee Railroad Company, countersigned and registered by the said complainants, and what were such bonds selling for at the brokers' board in New York City during the months of May, June, July, August, and September, in the year 1857? Give the average price thereof for each week during the months last mentioned, and about the amount of said bonds sold in each of said weeks.

Lastly. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject-matter of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

PALMER & STARK, and
BUTLER, BUTTRICK & COTTRILL,
Sol'rs for def't Helfenstein.

521 The complainants object to each and every interrogatory propounded to said Foster and Broadhead, as incompetent, irrelevant, and immaterial.

Dated July 30th, 1860.

CARY & PRATT, *Sol's for compl'ts.*

522 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district
[SEAL.] of Wisconsin, this thirtieth day of July, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the said United States the eighty-fifth.

J. M. MILLER, *Clerk.*

523 Deposition of George H. Broadhead, one of the witnesses named in the commission hereto annexed, taken before Alexander Spaulding, the commissioner therein named, at his office, No. 111 Broadway, in the city of New York, on the 6th day of August, 1860, in an action pending in the district court of the United States for the district of Wisconsin, wherein Green C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, are complainants, and La Crosse and Milwaukee Railroad Company, J. Albert Helfenstein and others, are defendants, on the part of the defendant Helfenstein, said deposition being taken and reduced to writing by the said commissioner under and in virtue of said annexed commission. The said witness, George H. Broadhead, after having been duly sworn by said commissioner that the answers given by him to the interrogatories proposed to him in said action should be truth, the whole truth, and nothing but the truth, on his oath, testified as follows:

To the first interrogatory annexed to said commission the witness says: My name is George H. Broadhead; I am aged over forty years; my occupation is acting as secretary to the New York Stock and Exchange Board; and I reside in the city of New York.

To the second interrogatory annexed to said commission the witness says: I do not know any of the parties to this suit except the La Crosse
524 and Milwaukee Railroad Company, and I only know said company as broker in the city of New York, and as secretary, as before mentioned, and have known said company, as broker and secretary, about three years.

To the third interrogatory the witness says: I am connected with the board of brokers of the city of New York, the legal title of which is, the New York Stock and Exchange Board, as secretary to said board, and have been acting in that capacity for the last twelve years, or thereabouts.

To the fourth interrogatory the witness says: The La Crosse land grant bonds, so called, sold at the brokers' board, in the city of New York, intervening the 1st day of October, 1857, to the 31st day of July, 1858, at from twenty to fifty cents on a dollar. The sale at twenty cents on a dollar was the 7th day of November, 1857; the sale at fifty cents on a dollar was on the 26th day of January, 1858; and the average price for the above period was about thirty-five cents on a dollar. I do not know anything about the value of said bonds, except that I know what they sold for at the board of brokers. My means of information are derived from the fact of my being secretary to the board, and having access to the record of sales kept by the board. I was present at the board when some of the sales were made, and sometimes made the record of sales when I was present, but not always. My
525 information in regard to the sales, for the period above stated, is derived from an examination of the said records of sales made by me with a view of giving this testimony. I have no recollection of the prices independent of the record of sales. Fifty cents on a dollar was the highest price the bonds brought at any time during the above period. The sales were generally in small lots. The record of sales is only for the morning board, no record of sales of the afternoon board is kept by the board.

To the fifth interrogatory the witness says: I cannot say; the board never kept a record of the number of the bonds sold. I cannot, therefore, answer this interrogatory further. I know nothing of the particular bonds referred to in this interrogatory, and have no means of knowing. There were no sales whatever of land grant bonds in the months of May and June, 1857, and a sale of only one of these bonds in July, 1857, that was sold July 30, 1857, at fifty cents on a dollar. In the month of August, 1857, from the 11th to the 30th, inclusive, there were sales of twenty thousand of these bonds, (par value,) or twenty bonds of one thousand dollars each, at from thirty-five to forty-eight cents on a dollar.

In September, 1857, sales were made of seven bonds of a thousand dollars each, at from thirty to thirty-five cents on a dollar. In October, 1857, only one bond was sold, and that at thirty-five cents on a dollar. In November, 1857, twelve bonds were sold, of a thousand dollars each, at from thirty to thirty-five cents on a dollar. In December, 1857, there were 18 bonds, of $1,000 each, sold at from twenty-five to thirty cents on a dollar.

526 In January, 1858, the bonds sold at from thirty to fifty cents on a dollar; the sales were large, and the fluctuation broadest. In February, 1858, the bonds sold from thirty-five to forty-two and a half cents on a dollar. In March, 1858, they sold from thirty to thirty-nine cents on a dollar. In April, 1858, from thirty and a half to thirty-four and three quarters cents on a dollar. In May, 1858, from thirty-one to thirty-five cents on a dollar. In June, 1858, from twenty-nine and $\frac{7}{8}$ cents to thirty-three $\frac{1}{2}$ cents on a dollar. In July, 1858, from twenty-two to thirty and $\frac{3}{4}$ cents on a dollar. In March, 1858, only one five hundred dollar bond was sold, and this is the only $500 dollar bond I can find any record of. The above bonds are the land grant bonds referred to in the interrogatories.

To the sixth interrogatory the witness says: In May and June, 1857, there were no sales. In July only one bond sold, and that at fifty cents on a dollar. In August there were twenty. In August, the first week, no sales; the second week, the sales were at forty-eight cents on a dollar; the third week, at from 40 to 45 cents on a dollar; the fourth week, at from 35 to 38 cents on a dollar.

In September, 1857, on the first and second week, they sold at 35 cents on a dollar; on the 3 week at 34 cents on a dollar, and on the 4 week, at thirty cents on a dollar. In all, there were sold for the above period about twenty-eight bonds of $1,000 each.

Lastly. To the last interrogatory the witness says: I do not know and cannot set forth any other matter or thing beyond what I have already stated, which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject matter of this examination or matter in question in this cause.

GEO. H. BROADHEAD.

Taken, subscribed, and sworn to before me, by George H. Broadhead, at No. 111 Broadway, in the city of New York, this 6th day of August, 1860.

ALEXANDER SPAULDING, *Commissioner.*

528 Deposition of Seth R Foster, one of the witnesses named in the commission hereto annexed, taken before Alexander Spaulding, the commissioner therein named, at the Union Hall, in the village of Saratoga, in the State of New York, on the 7th day of August, 1860, in an action pending in the district court of the United States for the district of Wisconsin, wherein Green C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, are complainants, and La Crosse and Milwaukee Railroad Company, J. Albert Helfenstein, trustee, and others, are defendants, on the part of the defendant Helfenstein, said deposition being taken and reduced to writing by the said commissioner, under and in virtue of said annexed commission. The said witness, after having been duly sworn by said commissioner publicly that the answers given by him to the interrogatories propounded to him in said action should be the truth, the whole truth, and nothing but the truth, on his oath testified as follows:

To the first interrogatory said Foster says: My name is Seth R. Foster; am thirty-seven years old. I have been engaged in steamboating, and reside in the city of New York.

To the second interrogatory the witness says: I am not personally ac-

quainted with any of the parties named in the title of this suit. I have seen Mr. Soutter, and have known the La Crosse and Milwaukee Railroad Company about four years. I think I saw Mr. Soutter some two or three years ago.

To the third interrogatory the witness says: I know all of the per-
529 sons named in this interrogatory. I have known them all from three to four years.

To the fourth interrogatory the witness says: I was a director of the La Crosse and Milwaukee Railroad Company in the summer or fall of 1858; my impression is that I was elected director in the summer of 1858, and ceased to act in the fall of 1858, but I cannot fix the precise date. I continued such director only three or four months.

To the fifth interrogatory the witness says: When I became a director of the company, as stated in reply to the fourth interrogatory, Stephen Clark was president of the company I think D. E. Wheeler, Alfred Noxon, Mr. Stephen Clark, George W. Luther, and D. V. N. Radcliffe were directors; the names of the other directors I cannot now remember. The above-named persons all resided in the State of New York. I think most of them were directors all the time that I was; there were some changes, but I cannot now recollect them.

To the sixth interrogatory the witness says: There was a contract in writing entered into about January, 1858, between all of the parties named in this interrogatory, except John H. Reynolds, who did not sign it, in relation to the sale of the bonds mentioned in said interrogatory, and the completion of the road to La Crosse. I can't tell the precise date of the contract, or when, in fact, executed; said contract, or a duplicate thereof, or a copy of the same, is not in my possession or under my control; I cannot, therefore, produce a copy of the same on this examination. I do not recollect the contents of the contract, and cannot state what it contains.

530 To the seventh interrogatory the witness says: I can't tell when the bonds referred to in said interrogatory were issued and delivered by the company, and do not know to whom they were delivered; my impression is they were delivered to Alfred Noxon and *and* myself by the president of the company on the order of Selah Chamberlain, but I can't tell the date. I don't know whether any of the bonds were deposited with, or delivered to, Mr. Lovett, mentioned in said interrogatory. I cannot answer said interrogatory further. I have stated all I recollect regarding the matters mentioned in said interrogatory. I have no means here of ascertaining whether Mr. Lovett ever received any of the bonds. I don't know of any agreement or understanding with him about said bonds of any nature.

To the eighth interrogatory the witness says: I cannot answer this interrogatory further than I have by my reply to the seventh interrogatory.

To the ninth interrogatory the witness says: In reply to this interrogatory I can only say I don't know and cannot answer. I don't know anything about the matters therein inquired about or alluded to. I don't recollect anything about those matters. I may have known at one time, but I have forgotten all about those matters.

To the tenth interrogatory the witness says: Some of these bonds, as I have before stated, were delivered to myself and Mr. Noxon on the order of Mr. Chamberlain. Those which Mr. Noxon took I don't recollect anything about. I don't recollect what portion of them he received, or when
531 or where he sold them, or to whom or in what amounts, or what he received for them, or any part thereof, or what the proceeds were, or what he did with the proceeds, and I don't know what he did with the proceeds; my impression is that he deposited the proceeds to the credit of Mr. Chamberlain in the Albany Exchange Bank; but of this I have no recollection.

To the eleventh interrogatory the witness says: I cannot say. I don't recollect anything about the matters referred to in this interrogatory.

To the twelfth interrogatory the witness says: My impression is I never received any bonds from Mr. Lovett direct; what bonds came into my possession I sold through various brokers, whose names I don't recollect. I sold some myself, but the prices I don't recollect; but all the proceeds were deposited by me to the credit of Chamberlain in the Albany Exchange Bank. I don't recollect of retaining any of the proceeds myself. I don't recollect the number of the bonds I negotiated or secured to be negotiated through others. I cannot answer this interrogatory further, for the reason that I don't recollect.

To the thirteenth interrogatory the witness says: I do not recollect any agreement or understanding with any parties mentioned in said interrogatory regarding said bonds or the disposal of them. I have no recollection in regard to the matters referred to in said interrogatory, and therefore cannot answer said interrogatory further than I have.

532 To the fourteenth interrogatory the witness says: I cannot answer. I don't recollect anything about it, and do not know any about the matters therein inquired after.

To the fifteenth interrogatory the witness says: I am unable to answer. I do not know anything about any arrangement with Mr. Radcliffe of any such nature, or any arrangement whatever, as I now recollect of.

To the sixteenth interrogatory the witness says: I don't recollect of purchasing of Mr. Radcliffe his interest in any contract or understanding or agreement for any bond. I don't recollect paying him any bonds, and don't know of any other person doing it.

To the last interrogatory the witness says: I don't know, and cannot set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this examination, or the matters in question in this cause.

SETH R. FOSTER.

Taken, subscribed, and sworn to before me, by Seth R. Foster, at Union Hall, in the village of Saratoga Springs, this 7th day of August, 1860.

ALEXANDER SPAULDING, *Commissioner.*

It is hereby certified that on the 6th day of August, 1860, at my office, at No. 111 Broadway, in the city of New York, George H. Broadhead, one of the witnesses named in said commission, appeared before me, the commissioner named in said commission; that he was publicly sworn by me as such commissioner in the action, according to the instructions in which this commission issued; that the interrogatories administered to him, and annexed to said commission, were severally read to him, and that his answers thereto were at the time reduced to writing by me in his presence, and that he subscribed the same before me. And I further certify that on the 7th day of August, 1860, at Union Hall, in the village of Saratoga, in the State of New York, Seth R. Foster, one of the witnesses named in said commission, appeared before me, the commissioner therein named; that he was publicly sworn by me as such commissioner in the action according to the annexed instructions in which this commission issued; that the interrogatories administered to him, and annexed hereto were severally read to him, and that his answers thereto were at the time reduced to writing by me in his presence, and that he subscribed the same before me. And I further certify that the said depositions of said witnesses are hereto annexed to said commission.

ALEXANDER SPAULDING, *Commissioner.*

Saratoga Springs, N. Y., August 7th, 1860.

An indenture, made the twenty-eighth day of January, one thousand
534 eight hundred and fifty-eight, between Selah Chamberlain of the first part and the La Crosse and Milwaukee Railroad Company of the second part.

Whereas a certain instrument, bearing date September 26, 1857, was heretofore executed between the parties hereto and is now in force, by which the railroad of said company, constructed and to be constructed from Portage City to La Crosse, is demised to the said party of the first part, and the net revenue to be derived from the operation of said road is agreed to be applied to certain purposes and in a certain manner, as by reference to such instrument will appear:

Now, for certain valuable considerations, the receipt whereof is hereby acknowledged, the parties hereto have covenanted, granted, and agreed, and do hereby covenant, grant, and agree, to and with each other that the said instrument bearing date September 26, 1857, shall be, and hereby is, so modified and altered as that all the net revenues to be realized during the existence of said lease, from the operation of the said road constructed and to be constructed from the said point known as the Junction to La Crosse, subsequent to the first day of August, 1858, shall, so long as said lease shall endure, be applied in the first instance to pay the interest which shall accrue subsequent to said first day of August next, upon the four millions of dollars of land grant bonds issued and to be issued under and in pursuance of the deed of trust or mortgage bearing date December 31, 1856, made by said company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as
trustees, and the instrument in modification thereof bearing even date
535 herewith.

In witness whereof, the said Selah Chamberlain hath hereunto set his hand and seal, and the said, the La Crosse and Milwaukee Railroad Company hath caused its corporate seal to be hereunto affixed, and the same to be attested by its president the day and year first above written.

SELAH CHAMBERLAIN. [SEAL.]

In presence of—
CHS. F. SOUTHMAYD.
C. L. PERKINS.

The La Crosse and Milwaukee Railroad Company, by—
STEPHEN CLARK, *President.* [SEAL.]
JACKSON HADLEY,
Secretary of the La Crosse and Milwaukie Rail Road Company.

In presence of, as to Jackson Hadley—
J. P. C. COTTRILL.

STATE OF NEW YORK, *City and county of New York, ss:*

Be it remembered, that on the 30th day of January, in the year 1858, before me, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take acknowledgments and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other contract, under seal or not, to administer oaths and take and certify depositions to be used and recorded in said State of Wisconsin, appeared Selah Chamberlain, described in and who executed the foregoing instrument of writing between himself, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, by Stephen Clark, its president, the other party thereto, and the said Selah Chamberlain acknowledged that he executed said instrument freely for the purposes therein stated.

536 And I certify that the person who made the said acknowledgment is known to me to be the individual described in and who executed the said instrument.

[L. S.] Given under my hand and official seal the day and year above written.

ORLANDO L. STEWART,
Commissioner for Wisconsin.

STATE OF WISCONSIN, *County of Milwaukie, ss:*

Be it remembered, that on this 10th day of February, eighteen hundred and fifty-eight, before me personally appeared Jackson Hadley, to me well known to be the person who executed the foregoing instrument as secretary of the La Crosse and Milwaukie Railroad Company, and acknowledged that he executed the same as the free act and deed of said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned.

J. P. C. COTTRILL,
Notary Public, residing in Milwaukee County, Wisconsin.

OFFICE SECRETARY STATE, MADISON.

Rec'd for record, and recorded in Book of Railroad Mortgages, on pages 327, 328, February 11th, 1858, at 8.30 a. m.

D. W. JONES, *Secretary of State.*

537 This agreement, made and entered into this first day of January, A. D. 1858, by and between the La Crosse and Milwaukee Railroad Company, party of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part, witnesseth, that the said party of the second part, for and in consideration of the several covenants and stipulations on the part of the said party of the first part, hereinafter mentioned and set forth, to be made and performed by the said party of the first part, hereby contracts and agrees to construct, for said party of the first part, a single track railroad, including all necessary side tracks, upon and along the line of said railroad of the said party of the first part, as at present located, extending from the Junction at or near the village of Tomah to the Mississippi River, at the city of La Crosse, the western terminus of said road. The party of the first part reserving the right to change or vary the line of location of said road by paying the said Chamberlain the extra cost, if any caused by such changes in the aggregate, and to fully complete the same on or before the first day of January, 1859.

The work included in this contract is all the work required to fully construct that portion of road of said company hereinbefore described, according to the specifications and requirements of a contract entered into by and between the said parties aforesaid, bearing date the 20th day of January, 1857, except the tunnel, which is to be excavated to a sufficient dimension for a single track railroad for the construction of the western division of the road of said company, viz: grading, bridging, ties, culverts, cattle guards, chairs, spikes, and laying track, and also including grubbing and clearing, and hauling of materials, and all other work required to complete and finish the same; to sub-grade the track to be laid, to set grade stakes. The said party of the second part also further agrees to pay the duties on the iron required to lay the track from the village of Tomah to the city of La Crosse, including all necessary turn-outs and side tracks, for the sum of one million five hundred thousand dollars, payable in the bonds of said company, secured by a mortgage or deed of trust, heretofore executed to Greene C. Bronson, Shepard Knapp, and James T. Soutter, as trustees,

upon the western division of said road, and the title of said company present and prospective, to the lands granted by Congress to aid in the construction of such roads, and commonly called the land grant bonds of said company, at the par value thereof, as hereinafter provided. And the said Chamberlain agrees to furnish and provide, and transport, at his own expense, all the materials required in and for the work aforesaid, except the iron rails, which are to be furnished and provided by the said party of the first part, and delivered to the said Chamberlain at the depot of the said La Crosse and Milwaukee railroad in the city of Milwaukee, subject to the duties thereon; and no charge to the said Chamberlain shall be made for transporting the iron rails or other materials over the line of said railroad by said party of the first part.

It is also agreed by and between the parties aforesaid that the said party of the first part shall do all the engineering, and shall have the work laid out and divided into sections, and shall procure, and furnish, and provide all right of way, and wasting grounds, and borrowing pits, as required and provided for in said contract dated the 20th day of January, 1857.

And the said party of the first part covenants and agrees to and with the said party of the second part that the said party of the first part will, on or before the first day of February next, pay and deliver to the said party of the second part the full sum of one million five hundred thousand dollars in the bonds of said company, of the description hereinbefore mentioned, including therewith the same amount of privilege stock, such as the said company have heretofore issued with the same class of bonds. Estimates shall be made on the first of each and every month, commencing on the first day of February next, by the engineer in charge of said work, of the amount of work done and materials furnished by the said party of the second part during the preceding month, and of the proportion which such work and materials bear to the whole work and materials embraced in the contract; and also separate estimates of the amount of work done and materials furnished by each sub-contractor; and copies of all such estimates shall be furnished to the said party of the second part. And the party of the second part shall be credited on the books of said company for such proportional sum of the whole amount to be paid under this contract, as the work done and materials furnished, embraced in such monthly estimates, bears to the whole work and materials included in this contract. It is also further agreed that the said party of the first part shall have the right to change the location of the line or direction of said road into the city of La Crosse, from the North La Crosse route, by paying to said Chamberlain the increased cost of construction and materials to be furnished by reason of such change of route or line of said road.

The party of the second part also covenants and agrees to return to the party of the first part one hundred and twenty-nine land grant bonds of said company, delivered to said Chamberlain in March last, with the coupons attached, due on and after the first day of August, 1858.

It is understood and agreed that all claims to damages by either party against the other, arising from any breach of the contract of 20th of January, 1857, happening prior to this date, are by this contract mutually released, settled, and extinguished, except such as have already been adjusted between the parties.

In witness whereof, the said company has caused these presents to be signed by its president, and the said party of the second part has subscribed the same, the day and year first above written.

La Crosse and Milwaukee Railroad Company, by—

(Signed) STEPHEN CLARK, *President.*

S. CHAMBERLAIN.

538 This indenture, made the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and fifty-eight, between Thomas Spencer and Benjamin W. Reynolds, of the city of La Crosse, in the State of Wisconsin, of the first part, and Selah Chamberlain, of the city of Cleveland, in the State of Ohio, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, reserved, and contained on the part and behalf of the party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, have leased, granted, and demised, and by these presents do lease, grant, and demise, unto the said party of the second part, his executors, administrators, and assigns, all that strip or parcel of land situate on the east bank of the Black River, on lot number one, section thirty-one, T. 16 N., of R. 7 W., the said strip of land being two hundred and fifty feet in width from east to west, and extending six hundred feet northerly from the south line of said lot one. To have and to hold the said above-mentioned and described premises, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, during the time hereinafter stated.

The said party of the second part hereby covenants and agrees to and with the said parties of the first part that he will erect upon the said
539 above-described premises, depot buildings and appurtenances, and this lease is to continue, and the said party of the second part is to occupy said premises until such time as the La Crosse and Milwaukee Railroad Company or its assigns shall pay, or cause to be paid, to the said party of the second part, his executors, administrators, or assigns all costs and expenses in and by the said party of the second part, with twelve per cent. per annum interest on the same, in and about erecting said bulding and appurtenances on said premises for depot purposes; and, upon such payment being made as aforesaid to the said party of the second part, his executors, administrators, and assigns, then these presents terminate and become void.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

THOMAS SPENCER. [SEAL.]
BENJ. W. REYNOLDS. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. R. SILL.
P. M. JOHNSON.

STATE OF WISCONSIN, *County of La Crosse, ss:*

Be it remembered, that on the 29th day of July, 1858, personally
540 appeared before me the above-named Thomas Spencer and Benjamin W. Reynolds, to me known to be the person who executed the foregoing instrument, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

P. M. JOHNSON, *Notary Public, Wis.*

Endorsed as follows:

"OFFICE REGISTER OF DEEDS, COUNTY OF LA CROSSE.

"Received for record July 29th, 1858, at 3¼ p. m., and duly recorded in volume 17, page 24.

"JOHN A. WALKER, *Register.*"

541 EXHIBIT No. 11.

Contract to build the road from Tomah to La Crosse.

This agreement, made and entered into this first day of January, A. D·

1858, by and between the La Crosse and Milwaukee Railroad Company, party of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part, witnesseth, that the said party of the second part, for and in consideration of the several covenants and stipulations on the part of the said party of the first part hereinafter mentioned and set forth, to be made and performed by the said party of the first part, hereby contracts and agrees to construct, for said party of the first part, a single tract railroad, including all necessary side tracks, upon and along the line of said railroad of said party of the first part, as at present located, extending from the Junction, at or near the village of Tomah, to the Mississippi River, at the city of La Crosse, the western terminus of said road, the party of the first part reserving the right to change or vary the line of location of said road by paying the said Chamberlain the extra cost, if any, caused by such changes in the aggregate, and to fully complete the same on or before the first day of January, 1859.

The work included in this contract is all the work required to fully construct that portion of road of said company hereinbefore described, according to the specifications and requirements of a contract entered into by and between the said parties aforesaid, bearing date the 20th day of January, 1857, except the tunnel, which is to be excavated to a sufficient dimension for a single track railroad for the construction of the western division of the road of said company, viz: grading, bridging, ties, culverts, cattle-guards, chairs, spikes, and laying track, and also including grubbing and clearing, and hauling of materials, and all other work required to complete and finish the same; to sub-grade the track to be laid, to set grade stakes. The said party of the second part also further agrees to pay the duties on the iron required to lay the track from the village of Tomah to the city of La Crosse, including all necessary turn-outs and side tracks, for the sum of one million five hundred thousand dollars, payable in the bonds of said company, secured by a mortgage or deed of trust heretofore executed to Greene C. Bronson, Shepard Knapp, and James T. Soutter, as trustees, upon the western division of said road, and the title of said company, present and prospective, to the lands granted by Congress to aid in the construction of such roads, and commonly called the land grant bonds of said company, at the par value thereof, as hereinafter provided. And the said Chamberlain agrees to furnish, and provide, and transport, at his own expense, all the materials required in and for the work aforesaid, except the iron rails, which are to be furnished and provided by the said party of the first part, and delivered to the said Chamberlain at the depot of the said La Crosse and Milwaukee railroad in the city of Milwaukee, subject to the duties thereon, and no charge to the said Chamberlain shall be made for transporting the iron rails or other materials over the line of said railroad by said party of the first part.

It is also agreed by and between the parties aforesaid that the said party of the first part shall do all the engineering, and shall have the work laid out and divided into sections, and shall procure, and furnish, and provide all right of way, and wasting grounds, and borrowing pits, as required and provided for in said contract dated the 20th day of January, 1857.

And the said party of the first part covenants and agrees to and with the said party of the second part that the said party of the first part will, on or before the first day of February next, pay and deliver to the said party of the second part the full sum of one million five hundred thousand dollars in the bonds of said company, of the description hereinbefore mentioned, including therewith the same amount of privilege stock, such as the said company have heretofore issued, with the same class of bonds. Estimates shall be made on the first of each and every month, commencing on the first day of February next, by the engineer in charge of the said work, of the amount of

work done and materials furnished by the said party of the second part during the preceding month and of the proportion which such work and materials bear to the whole work and materials embraced in the contract, and also separate estimates of the amount of work done and materials furnished by each sub-contractor, and copies of all such estimates shall be furnished to the said party of the second part. And the party of the second part shall be credited on the books of said company for such proportional sum of the whole amount to be paid under this contract as the work done and materials furnished, embraced in such monthly estimates, bears to the whole work and materials included in this contract. It is also further agreed that the said party of the first part shall have the right to change the location of the line or direction of said road into the city of La Crosse, from the North La Crosse route, by paying to said Chamberlain the increased cost of construction and materials to be furnished by reason of such change of route or line of said road.

The party of the second part also covenants and agrees to return to the party of the first part one hundred and twenty nine land grant bonds of said company, delivered to said Chamberlain in March last with the coupons attached, due on and after the first day of August, 1858.

It is understood and agreed that all claims to damages, by either party against the other, arising from any breach of the contract of 20th of January, 1857, happening prior to this date, are by this contract mutually released, settled, and extinguished, except such as have already been adjusted between the parties.

In witness whereof, the said company has caused these presents to be signed by its president, and the said party of the second part has subscribed the same the day and year first above written.

La Crosse and Milwaukee Railroad Company, by—
STEPHEN CLARK, *President.*
S. CHAMBERLAIN.

542 *Deposition of E. H. Goodrich.*

District court of the United States for the district of Wisconsin.

JAMES T. SOUTTER AND GREENE C. BRONSON
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et als.* } In equity.

GREENE C. BRONSON, JAMES T. SOUTTER AND SHEPHERD Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et als.*

Examination of a witness taken in pursuance and by virtue of an order of reference in each of these causes, of the eleventh day of March, A. D. 1861.

SATURDAY, 25*th May*, 1861.

Present: Winfield Smith, Increase A. Lapham, and Jerome R. Brigham, masters; J. H. Van Dyke, of counsel for Selah Chamberlain, defendant; Levi Hubbell, of counsel for Sebre Howard, defendant; John W. Cary, of counsel for the complainants in the last entitled cause.

Edwin H. Goodrich, being called as a witness on the part of the complainants in the said causes, and having been previously sworn, testifies:

This map I believe to be a correct map of the road-bed and the real estate of the La Crosse and Milwaukee Railroad Company in the city of Milwaukee. It is called the map of the land line of the road. A copy is filed in the office of the secretary of state at Madison. (A copy, marked Exhibit

No. 11, is to be hereto attached, showing the particulars of the lots owned by said company in said city, including those sold on the Howard judgments.) The road-bed is marked on the map, together with the numbers of the lots in question. The lots in block one are occupied or necessary
543 for the use of the road; also the lots in block thirteen. The lots in blocks fifteen, sixteen, nineteen, and twenty have never been occupied by the road, but were purchased with the intention of erecting upon them, with others, a grain elevator for the use of the road, and running a track to them on the east side of the canal, from a point near the dam. The design was to purchase and use the lots from a point near the dam down to the foot of the island, embracing the canal lots purchased with others to be purchased. Lot eight, in block twenty-two, is not used for the purposes of the road. Lot sixteen in that block is used for the road. All the lots in block thirty are used for the purposes of the road. So also the lots in block thirty-three. Lots in block forty are also used for the purposes of the road, except the southwest corner of block ten, on Third street, and that part of lots eight or nine on which Enno Myer's brick drug store is situated. The company owns that brick building (the drug store) but not the buildings on the southwest corner of lot ten, which are three small wooden buildings, owned by the parties occupying the ground. The company leases the Myer building to Myer, he being obliged to leave it on a short notice from us. So the lot covered by the wooden buildings was only temporarily suffered to be used by the occupants. Neither they nor Myer have any regular lease. The company has occupied all those parcels of land. They have ceased to occupy them within two years. Myer has occupied his premises ever since he owned them, and the company has never occupied the building now occupied by him, nor the ground on which it stands, but it occupies all the remainder of the lot. It was one of the conditions of the purchase that he should be allowed to occupy the building for a definite time, which has now elapsed. The whole of the property on which these houses stand is necessary for the convenient use of the road, either now or prospectively. The leases are merely at will, because we did not know how soon we might want to use the property. We need it for the purpose of depot buildings. The passengers are now landed on block forty-one, and the station-house is here, but the cars stand on block forty also.

The lots in block thirty-three in Sherman's addition are presently necessary for the road-bed. The ground in block forty-seven is occupied by the road. So also the ground in block forty-eight. So also the land in the reserved acre, which is used a road-bed and a barrowing pit. The canal lots have never been occupied by the road, but were bought, as I have stated, to lay the track upon to the foot of the island. The ground in lot eighty-three is used and occupied by the company for a road-bed and wood yard. The lots in block fifty, in the seventh ward, have never been in any manner used by the railroad company.

Blocks forty and forty-one are used as and called the depot grounds. The company has not constructed a permanent grain or passenger depot in Milwaukee. In my opinion, the whole of blocks forty and forty-one are requisite for those purposes, and they were intended for them. We have not depot buildings now adequate for the use of the road, and for want of them we have been obliged to haul grain in bulk to private warehouses in the fourth ward, over half a mile from our depot. There is not room enough on
544 the whole of blocks forty and forty-one for the depots now required for the use of the road. We need for the present use of the road, for the business now doing as much again land and buildings as we are now using for depot purposes. We occupy 760 feet of river front only. Higby has a warehouse there on block forty-one, of which the company has the exclusive benefit so far as use or occupancy is concerned.

The company has an agreement with Higby that he should receive all the grain we send to him at prices fixed in the agreement for which he charges the grain owners. 360 feet of the water front of block forty is occupied by a warehouse owned by the company. The water fronts of lots one, two, and part of lot three, in block forty-one, is occupied by a grain elevator. The remainder of the water front of lot three, of lots four, five, six, seven, and of a part of lot eight, is used for receiving railroad iron and heavy freights. The remainder of the water front of lot eight and of lots nine and ten is covered with a shed warehouses, and is for receiving and storing rolling freight. We occupy nearly the entire street front of block forty-one for passenger purposes. We have no buildings on the street front of block forty. We could use it to very good advantage if we had the means to build. I have spoken above only of the land owned by the railroad company.

At the date of the first mortgage there was no rolling stock on hand, June 30th, 1854. At the date of the mortgage to Bronson and Soutter, August 17th, 1857, the cost of the rolling stock on hand was $544,492 16.

At the date of the land grant mortgage, 31 December, 1856, the rolling stock on hand cost $455,001 06.

At the date of the order of reference in these causes, (11 March, 1861,) the cost of the rolling stock on hand was $623,235 78.

None of the rolling stock was purchased with land grant bonds, but part of it was paid for with proceeds of the land grant bonds. Out of the proceeds of those bonds, (issued under the mortgage to Bronson, Soutter & Knapp,) three thousand dollars was paid for the right to use a car brake, and thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents were paid for forty box cars. The entire amount of rolling stock is about all on hand at this time, scarcely any having been destroyed.

The whole sum paid for rolling stock out of the earnings of the road since 31 December, 1858, is $78,743 62, besides some small sums for transportation of rolling stock. Besides that payments have been made out of the general earnings of the road for building rolling stock in the company's shops, on the eastern division of the road, as per report of the receiver, made December 31, 1860.

EDWIN H. GOODRICH.

546 *Deposition of Wm. R. Sill.*

District court of the United States for the district of Wisconsin.

James T. Soutter and Greene C. Bronson
vs.
The La Crosse and Milwaukee Railroad Company *et als.* } In equity.

Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees,
vs.
The La Crosse and Milwaukee Railroad Company *et als.*

Examination of witnesses taken in pursuance and by virtue of an order of reference in each of these causes, of the eleventh day of March, A. D. 1861.

Tuesday, 9 *April*, 1861.

Present: Winfield Smith, Increase A. Lapham, Jerome R. Brigham, masters; J. A. Van Dyke, of counsel for Selah Chamberlain, defendant; M. H. Carpenter, of counsel for defendants Graham & Scott and Sebre Howard; and the Milwaukee and Minnesota Railroad Company.

William R. Sill being produced on the part of Selah Chamberlain and duly sworn says :

I reside in La Crosse, Wisconsin. My age is thirty-eight. I am by profession a civil engineer, and was in active service from 1844 to 1856. I was engineer of the La Crosse railroad ; chief engineer for about two years and a half, ceasing in the spring of 1856. I was employed in March, 1858, by the La Crosse and Milwaukee Railroad Company, to make a re-estimate of the work which had been done upon it (on the western division) up to October 1st, 1857. Mr. E. W. Woodward acted with me in making that estimate. This paper in my hand is the estimate made by us at that time—an original.

We had access to all the notes, papers, profiles, the plans and working notes of the engineers, to all existing contracts of which we had any knowledge, and we made up our estimate from them and from the measurements we took ourselves. We reduced that re-estimate, as so made by us, to writing. I think we referred in that to the contracts to which we had access. We had access to the contracts therein referred to. This paper is that estimate. It was made about three years ago. I can't recollect the amount of the particular items made up at that time. I can swear to the gross amount from recollection. It was between $1,040,000 and $1,050,000. We estimated the amount of all the work which had been done on the line of the road from Portage City to La Crosse up to 1 October, 1857.

Question. Can you now, by reference to the estimate then made, state what work you then estimated?

547 (Objected to by Mr. Carpenter as immaterial. Admitted.)

A. The road was very nearly completed from Portage to New Lisbon, about 43 miles. There was also a large amount of work done at the tunnel, and work done at various places between the tunnel and La Crosse. There was also 2.32 miles of side track between Portage and New Lisbon There was also quite an amount of rock cutting and rock taken out of the excavation; also a large amount of earth, which had been hauled over 500 feet. The grubbing and cleaning had been done to New Lisbon, and some beyond. There had been some roadway bridges, cattle passes, &c, some bank wall, some pile bridging, a tunnel culvert at Kilbourn City, some ballasting done between Portage and New Lisbon; also an item that we considered extra, for grading depot grounds at Kilbourn City. We also estimated Chamberlain's damage for change of line and detention at New Lisbon. Those make up the items of the estimate. The 43 miles was main line.

(The counsel for the defendant Selah Chamberlain objects that the defendants, judgment creditors of the La Crosse and Milwaukee Railroad Company, have no right to take part in the proceedings under the order of reference, and that no other defendants have such right. The counsel makes the objection at this point in order to preserve his rights on the coming in of the masters' report. The objection is overruled.)

I don't know who did the work so estimated by us. We measured all the side tracks between Portage and New Lisbon, and found there were 2.32 miles. The third item is grading, bridging, and masonry. There was some grading done between New Lisbon and Orange, (4 miles west,) I think; there was a large amount done at the tunnel and good deal between the tunnel and La Cross. I think there was some bridging and masonry also done, but how much I don't remember.

(At this point a stipulation was made and filed by the parties appearing, whereupon the examination of the witness, Wm. R. Sill, was interrupted and postponed, with the understanding that he is to be recalled.)

Deposition of E. C. Jennings.

WEDNESDAY, 10 *April*, 1861.

Present: Messrs. Brigham, Lapham, and Smith, masters; Mr. Carpenter and Emmons, of counsel.

Edgar C. Jennings, being sworn on the part of the defendant Chamberlain, says: I reside in Milwaukee; I have been keeping the general accounts of the La Crosse and Milwaukee railroad and the Milwaukee and Minnesota railroad for the last five years; I was formerly in the employ of the La Crosse and M. R. R. Co.; I was chief clerk in the superintendant's office, and for the last three years also ticket agent; I know when Mr. Chamberlain went into possession of the railroad; it was about the 1st October, 1857; I think I was employed by him, keeping the same accounts afterwards or before, in a new set of books; I kept the same books as are usually
548 kept in a superintendant's office, containing accounts of the earnings and expenses of the road—what would be called the general books in the operating department; I kept the income accounts, the operating accounts; the books are here, so that I can produce them; I get my entries from the cashier, the general freight agent, and the general ticket agent; Mr. Chamberlain had possession of the road from October, 1857, to November, 1859—what day in November I can't say; the books were balanced at the time when he ceased to receive the earnings; I made up my income account for the month all together, and do not know how the receipts were divided between Mr. Chamberlain and Mr. Dow; the money which came in after the 30th November, which had been earned previously, all went into the hands of Mr. Dow. I think I can give a statement of the total earnings and total expenses of the road during the time from 1 October, 1857, to 1 December, 1859; I have such a statement here. The earnings for November are all included in this statement, although part of them were received by Mr. Dow. (Paper produced and hereto attached, marked Exhibit 1.) This statement is made up from the books kept by me; the original books, from which this statement is made up, are in my possession here.

(Books exhibited. "General Ledger, La Crosse & Mil. R. R. Co.; S. Chamberlain mortgagee in possession; journal same.")

These books are the account of the earnings and expenses of the La Crosse and Mil. R. R. while in Mr. Chamberlain's possession. The first set of books are these.

(Books exhibited, marked ledger and journal, L. C. and M. R. R. Co.; S. Chamberlain, lessee; ledger marked A.)

I think Mr. Chamberlain received none of the earnings of the road earned during the month of September, 1857. The cashier's duty is to receive cash and act as treasurer of the road; he gives me duplicate receipts, from which I make up the amount. D. W. Keyes was cashier of the road while Mr. Chamberlain was in possession.

The general ticket agent issues tickets.

These books and this account are correct, so far as I know, and embrace the entire amounts received and disbursed during the period mentioned, so far as I know. The duplicate receipts handed to me, on which I have made my entries, are here in the La Crosse and Mil. R. R. depot building, embracing the period of this account.

(Mr. Chamberlain's counsel offers to exhibit to the masters and the counsel all the books and vouchers mentioned.)

Cross-examined.

I have no knowledge of the amount of money received by Mr. Chamber-

lain from the road in October, 1857, beyond what the books state. The total earnings of the road for that month were $46,352 18; I don't know whether Mr. Chamberlain received any more than that sum from the road; I know these are the earnings for October, 1857, because the figures show it; I get the figures from the returns made to me; I have only these statements, and have no personal knowledge whether those statements are correct.

549 TUESDAY, 16 *April*, 1861.

The amounts of the expenses are furnished me by the manager of the road. At the end of the month the bills are sent in, made into a schedule, and handed to me to enter. The bills are handed into the superintendant (or manager's) office by those persons of whom they are purchased. They had to be supervised by the proper officer, examined by the manager, Mr. Goodrich, to see if they were correct, made into a schedule, and entered on my books to the debit of "operating expenses," and credited to the parties of whom purchased. The first that I saw or knew about them was that certain papers or documents were handed to me as bookkeeper; if they were found to be correct, they were entered on the books; I merely had the entering of them on the books, and had no other supervision of them; I act only as bookkeeper; the papers are certified before I enter them; I do not enter papers hap-hazard. As near as I can remember, they were handed in to the manager's office; I don't know whose duty it was to collect them and keep them together; the bills were directed to be sent to the manager of the road monthly, I believe. I got at the receipts from the cashier's statements, of which these are specimens. These are the statements for October, 1857. He gave me what we called duplicate receipts for the money received by him. I entered them in the books as I got them. Dwight W. Keyes was then cashier. Persons to whom credit was given on our books for their bills were not always paid the same month. The conductors brought in packages of money received on the road, which I know went into the hands of the cashier. I can't personally state now how much money so went into his hands. I had access to the general freight ledger, (although I did not keep it,) and by that ledger it appeared that the agents made correct returns. That ledger was compared with their returns, and was a check upon them. The person who kept that ledger compared the entries on it with the cashier's returns. I do not know of my own knowledge whether the entries in the freight ledger were correct. It was not my business to compare that ledger with the returns. I sometimes did it; sometimes the freight agent did it alone.

The item of disbursements for October, 1857, embraces supplies and other items shown by the vouchers. Those vouchers are in the building here. I do not remember the amounts. I get the amount from pages 160 and 164 of Ledger A. That book does not show the items embraced in that sum, but only the gross amount of expenses for each month. The journal shows the amount of each account and of each item. These entries in the journal were generally entered in the ledger once a month in one item. The journal is paged. The page of the journal on which is the entry of the expenses for October, 1857, is 24. It is in my handwriting. One item is some $14,000 charged to Mr. Goodrich, manager, for which he is credited when the disbursements are made. This entry was made by me as given to me. It is the pay-roll item. I can't say by whom this item was given to me, but I presume by Mr. Goodrich's authority. I did not, of my own knowledge, know how much Mr. Goodrich paid. That was no part of my business.

550 On page 140 of the ledger is the item of disbursements for November, 1857, and the items are on pages 46, 47, and 48 of the journal.

I don't remember of handling any of the money myself so disbursed. I only know that I received these statements of expenses paid, and I entered them in the books. These payments were generally made on the manager's warrant drawn on the cashier. That was the rule, and I presume all were so made. The bills were presented, a schedule was made of them under the direction of the manager, and then they were entered by me to the debit of the operating account or construction account, and to the credit of the several persons presenting them. Then, on demand of such persons, warrants were drawn by the manager (usually about the 10th of each month) on the cashier for the balances to the credit of such persons, and the amounts were paid to them on such warrants by the cashier. When those warrants were drawn, the amounts were charged to the persons to whom the warrants were issued.

The expenses for December, 1857, were entered on Ledger A, page 140, charged to income account. The credits to individuals and debit to operating account are on pages 76, 77, and 79 of the journal. I have no other knowledge as to the correctness of these items than of the similar items in the preceeding months.

The expenses for January, 1858, are debited to income account, on page 140 of Ledger A, and on pages 106 and 107 of the journal. My knowledge as to these disbursements is the same as in the other cases.

My knowledge as to disbursements for February, 1858, is the same. They are stated on page 140 of the ledger, and on pages 132 and 133 of the journal.

The expenses for March are on pages 157, 158, and 159 of the journal.

The expenses for April, 1858, are on ledger p. 140, and on pages 186, 187, and 188 of the journal.

The expenses for May, 1858, are on page 140 of the ledger, and on pages 215, 216, and 217 of the journal.

On page 141 of the ledger are the expenses for June, 1858, and on pages 245, 246, and 247 of the journal.

The expenses for July, 1858, are on page 141 of the ledger, and on the journal, pages 272, 273, and 274.

The expenses for August, 1858, are on page 141 of the ledger, and on pages 300, 301, and 302, and 304 of the journal.

The expenses for September, 1858, are entered on page 141 of the ledger, and on pages 328, 329, and 330 of the journal.

The expenses for October, 1858, are entered on page 141 of the ledger, and on pages 351, 352, 353, and 357 of the journal.

The expenses for the following named months are entered in the ledger and journal on different pages, as follows:

1858.	Ledger page.	Journal pages.
November.....	141	382, 383, 384, and 387.
December.....	141	411, 412, 413, 414.
1859.	**Ledger B.**	**Journal.**
January.....	100	440, 441, 442, and 443.
551 February...	100	19, 20, 21, and 24.
March	100	46, 47, 48, and 51.
April.....	100	72, 73, 74, 75, and 76.
May.....	100	99, 100, 101, and 104.
June.....	100	128, 129, and 130.
July.....	100	148, 149, 151.
August.....	100	169, 170, and 171.
September.....	100	187, 188, 189, and 193.
October.....	101	210, 211, 212, and 217 and 218.
November.....	101	231, 232, 237, and 238, 239, and 242.

The account of the receipts was kept by me in the same books. They are found in the same ledger, on the opposite side—the credit side—of the ledger, on the pages above mentioned. When Mr. Chamberlain came in I opened a new set of books.

Re-examined.

There is on the books to the credit of L. B. Boomer, of the date of August 18th, 1860, to the debit of "operating account," an item "for his account of building drawbridge across the canal of the Fox and Wisconsin River Improvement Co., $3,275 85," which I have charged to the "income account" and credited to the "operating account," by order of Mr. Goodrich, the manager. In taking off this statement submitted by me from the books, I went over the income account on the books only as far as December, 1859, and consequently omitted this item. It is entered on page 102 of the ledger, and on page 405 of the journal. I cannot state why this item was not sooner charged to the income account. There was no entry of this item at all on the books before that time, (Aug. 18th, 1860.)

By the masters.

I made the entries to the debit of the individuals who received the warrants upon the evidence of the stubs of the warrant book, showing such warrants to have been issued. I made the entries every few days from the warrant book.

Re-examined.

I suppose the cashier has the paid warrants. When the month's business was closed up, the amount of the pay-rolls were credited to him. The pay-rolls were generally receipted. Sometimes men were discharged in the middle of a month, when they would receive their pay.

E. C. JENNINGS.

Sworn to and subscribed this 16th day of April, A. D. 1861, before me.
WINFIELD SMITH, *Master, &c.*

552 *Deposition of D. W. Keyes.*

THURSDAY, 18*th April*, 1861.

Dwight W. Keyes, produced and sworn as a witness on behalf of the defendant Selah Chamberlain, says:

From the first of October, 1857, to the first of December, 1859, I was cashier for Selah Chamberlain, in the office of the La Crosse and Milwaukee railroad. I received and disbursed all the money received from that railroad. I can give a statement of all the receipts and expenditures of the road in that period. I have compared the statement produced by Mr. Jennings, here marked Exhibit No. 1, with the books, and know it to be correct. I received all the money, furnished the bookkeeper with a statement of the amounts received and disbursed, and my account of receipts and disbursements corresponds to this statement. I can state that I received all the money and paid it all out, and I know that this is a correct statement of the amounts.

(Witness reads the entry on the books of the date of 18th August, 1860, as to bridge building by L. B. Boomer, on journal, p. 405, referred to in the deposition of Edgar C. Jennings.)

The bridge referred to in this entry was built by Mr. Boomer, and the money was paid to him and charged to his account. By some neglect the account was never charged to operating expenses until August 18th, 1860.

The entry on the book of the payment to him is February 29th, 1860, but it was paid before that time. There was some other work done by him, and the entry of the payment was delayed for a final settlement. I paid the money for Selah Chamberlain. The contract for the work was made while Mr. Chamberlain was in possession. When Mr. Chamberlain first took possession of the road Mr. Goodrich thought it best to open a construction account, for the purpose of keeping separate the disbursements for constructing the road, for building depots, ballasting, &c. These matters did not embrace any part of the construction of the road included in the contract between the company and Mr. Chamberlain. Afterwards these matters were all entered in the "operating expenses" account, and the "construction account," so called, was closed. These were all operating expenses, but are of the class called extraordinary expenditures. I received the moneys direct from all the station agents on the road, and from all the local agents here, from the agents on the Mississippi River, from other railroads, and from the Post Office Department. I made returns to the general ticket agent and the general freight agent of the monies returned to me, and it was their business to examine the accounts and see if the accounts of the different agents balanced. I had nothing to do with those accounts, and knew nothing about the state of them. I only knew what money I received and paid out. All the monies passed through my hands; occasionally a little account would come in, receipted as so much cash from some agent who had been obliged to contract the debt, but ordinarily the disbursemsnts were all made by me directly. The bookkeeper has the various vouchers making
553 the items of the expenditures made while Mr. Chamberlain was in possession. They were handed to him (Mr. E. C. Jennings, chief bookkeeper,) by Mr. Goodrich, to enter up and file away.

(The counsel for Selah Chamberlain, defendant, offers in evidence the record of a judgment rendered in his favor in the district court of the United States for the district of Wisconsin, against the La Crosse and Milwaukee Railroad Company, on the second day of October, 1857, for $629,089 72 damages, besides costs, $15 50.)

The counsel for the other defendants appearing, objects to the admission of the record as evidence of indebtedness to the defendant, Chamberlain.

(The record is admitted for the purposes for which it may be legal evidence.)

(The defendant Chamberlain's counsel offers and produces in evidence a certain draft, dated Sept. 4th, 1857, of which the paper hereto attached, marked Exhibit No. 2, is a copy.)

This draft was charged to Mr. Chamberlain on the books of the railroad company prior to September 26th, 1857, but it was never paid, because it was ascertained that the company had no funds in the drawee's hands to meet it. It was included in the settlement made 26th September, 1857, as so much money paid to him. The entry is on page 41 of the journal, and 28 of the ledger, western division.

The next item of Mr. Chamberlain's general account is for getting engines and iron over the Wisconsin River, $3,119 43. The company wanted to commence laying track on the other side of the river before the bridge was completed. I saw the men at work there, and I paid this amount for that work. This amount was not made up at the time of Mr. Chamberlain's settlement with the company in September 26th, 1857, and for that reason was not included in that settlement, although the work was done before. E. W. Woodward was chief engineer of the road at that time.

(Defendant Chamberlain's counsel offers in evidence and produces the original bill of work and disbursements certified by the chief engineer, of which a copy, marked Exhibit No. 3, is hereto attached Admitted in evidence.)

The certificate is in the handwriting of Mr. Woodward.

I have been on other works besides the La Crosse railroad. It is always customary to allow a commission for superintendence and the use of tools. That commission varies from 25 to 50 per cent. on the expenditures. It is paid to the party doing the work, furnishing the tools and men. I have never known it to be less than 25 per cent. I can myself give no estimate of the value of the work. They had many men and tools, some twenty horses, ropes and blocks, and other implements there. They made a road down to the river—or rather they widened it—and one up from the river on the other side. There were 12 team drivers there. I know that one engine and some iron and ties were taken over the river.

The next item in the general account of Mr. Chamberlain is for completing the road to New Lisbon, $56,500. At the time of the settlement, when the judgment notice was given to Mr. Chamberlain, Mr. Woodward,
554 the chief engineer of the company, made an estimate, which was recorded in the company's estimate book, (now in my hands,) of work as if done between Portage City and La Crosse, amounting to $1,076,450, from which was deducted for completing the road to New Lisbon the amount which he estimated for that purpose, amounting to $56,500, that amount of work being necessary to complete it. The work necessary to complete the road to New Lisbon has since been done by Mr. S. Chamberlain.

The next item is for gravelling the road between Beaver Dam and Milwaukee, between September, 1858, and January 1st, 1859. I paid the men engaged in this work, and know that they were engaged in doing it.

(Mr. Chamberlain's counsel offers in evidence a contract dated Sept. 26th, 1857, executed by Mr. Chamberlain and by the La Crosse and Milwaukee Railroad company, under a seal of the company, a copy of which is hereto attached, marked Exhibit No. 4. The contract is under seal of the company. Admitted.)

(Estimate also offered and received in evidence, of which a copy, marked Exhibit No. 5, is hereto attached.)

Mr. Staughton was at the time this work was done, and at the time this estimate was certified by him, the engineer in charge of the work and this certificate (or estimate) was signed by him in my presence, at the date of it, I think.

The next item in the general account is the bill for repairing gravel cars. I have that bill. That was $318 77. That amount was paid by me, I think, for Mr. Chamberlain. It was made out by the foreman. This was for work done before the judgment, and not included in the settlement.

The next item in the account is for stone and cement for drawbridge at Portage City; the date is Nov., 1857; the am't charged is $1,098 81. That amount I paid L. B. Boomer for stone and cement for drawbridge across canal at Portage City. This bill is no part of the bill above spoken of, amounting $3,275 85. This bill is for mason work, and that was for superstructure. J. M. L. Staughton was chief engineer at that time. I have his certificate of the correctness of this item.

(Bill offered with certificate of J. M. L. Staughton, chief engineer, and received in evidence, and a copy is hereunto attached, marked Exhibit No. 6.)

The next item of Mr. Chamberlain's general account is $52,519 70, am't paid int. on 2d mortgage and Mil. city bonds and exch. I did not pay this myself; the items are $1,000,000 of 2d mortgage bonds, bearing eight per cent. interest; semi-annual interest, $40,000. Interest on $314,000 Milwaukee city bonds, 7 per cent., $10,990. Exchange on $50,990, a 3 per cent., $1,529 70. I get the items from Mr. Chamberlain's private books. I know that $40,000 were deposited in the Ocean Bank, New York, March 1st, 1858, by Mr. Chamberlain, to pay interest on the 2d mortgage bonds; also $10,990

were deposited in same manner to pay interest on Milwaukee city bonds. Mr. Chamberlain received the coupons as paid from the Ocean Bank. I don't suppose they were all paid on that day, but the money was there. I hold these coupons for Mr. Chamberlain.

555 (Mr. Chamberlain tenders the coupons for examination by the masters.)

I was informed by Mr. Scott, the cashier of the Juneau Bank, that 3 per cent. was the current rate of exchange on that day.

(The next item is dated May 1, 1858, interest paid on 1st mortgage bonds and exch. $38,475.)

Mr. Chamberlain deposited in Ocean Bank, New York, May 1, 1858, to pay semi-annual interest upon $950,000, 1st mortgage bonds, the sum of $38,000; the exchange on that sum at 1¼ per cent. amounted to $475; that was the current rate of exchange that day, and which was the sum I paid for exchange at the Juneau Bank; Mr. Chamberlain received from the Ocean Bank the coupons paid, and I hold them for Mr. Chamberlain now.

(Mr. Chamberlain here offers the coupons for inspection of the masters.)

(The next item is dated Sept. 1, 1858, interest paid on 2d mortgage and city of Milwaukee bonds, and advertising and exchange, $51,554 92.)

The amount was deposited in the Ocean Bank by Mr. Chamberlain September 1, 1858, to pay interest on $1,000,000 2d mortgage bonds, $40,000; also to pay interest on $314,000 city of Milwaukee bonds, $10,990 00; also paid advertising payment of above in four papers, $54 48; also exchange on $51,044 48, 1 per cent., $510 44.

Mr. Chamberlain received these coupons paid from the Ocean Bank, and I hold them for him. (The coupons are here offered for inspection.)

(The next item of Mr. Chamberlain's account is dated Nov. 1, 1858, and is interest on 1st mortgage bonds, $38,000, sinking fund on same $12,000; exchange and advertising, $522 06.)

The amount was deposited in the Ocean Bank by Mr. Chamberlain, Nov. 1, 1858, to pay interest on $950,000 of 1st mortgage bonds, $ 8,000 00; also to pay United States Trust Company, in New York, at same date, for sinking fund, $12,000; also paid for advertisment, pay't of interest, $21 85; also paid for exchange on $50,021 85, 1 per cent, $500 21.

The coupons for the interest paid were sent to Mr. Chamberlain by the Ocean Bank, and I hold them for him. (Coupons tendered for inspection.)

Mr. Chamberlain's counsel here offer receipt signed by John A. Stewart, as secretary United States Trust Company, dated Nov. 1, 1858, for $12,000, paid on sinking fund.

(The next item is March 1, 1859, interest paid on 2d mortgage bonds on Milwaukee city bonds, and exchange and advertising, $57,777 52.)

The amount was deposited as before, by Mr. Chamberlain, March 1, 1859, to pay interest on $1,000,000 of 2d mortgage bonds, $40,000; also to pay interest on $314,000, Milwaukee city bonds, $10,990; also to pay advertising, $22 40; the exchange on $51,012 40, 1½ per cent., was $765 12.

It was either the current rate at the time, or we bought it at that rate.

556 The paid coupons for the above have been returned by the Ocean Bank to Mr. Chamberlain, and are now in my charge. (Coupons tendered for inspection, also vouchers for the advertising.)

The next item is May 1, 1859, interest paid on 1st mortgage bonds, and exchange and advertising, $38,587 85.

The amount was deposited by Mr. Chamberlain with the Ocean Bank, May 1, 1859, to pay interest on 1st mortgage bonds, $950,000, $38,000; also to pay advertising, $17 60; the exchange on $38,017 60, at 1½ per cent., $570 25. This was the current rate of exchange at that time. The paid coupons for this interest, and vouchers for advertising paid, have been re-

turned to Mr. Chamberlain by the Ocean Bank, and are in my charge. (Coupons and vouchers for advertising tendered.)

The next item in Mr. Chamberlain's general account is for getting cars and engine over dividing ridge, paid July, 1859, $53 00.

I don't know about this item.

The next item is for chairs and spikes, July, 1859, $1,116 30; I made out the account from the bills of the different men who certify that they received and used the material; I know that Mr. Chamberlain had chairs and spikes, and that they were taken by these men on the road. I only know that these men got these chairs and spikes from their statements. The men whose statements I use were in the employ of the road as road masters.

The next item is for building road beyond depot at La Crosse, $2,556 75; I know that road has been built from La Crosse Station building toward the town; I paid the pay-rolls just as they are charged, without any addition for profit; I paid it for Mr. Chamberlain; the amount so paid by me is $2,656 75.

The next item of the account is amount of cost of La Crosse Station buildings, December, 1858, $12,190.

I paid all of the money included in the above item to Mr. W. R. Sill; he made the disbursements at La Crosse; I understand that the pay-rolls for this item are in United States district court, with all the vouchers connected with it; I knew that the buildings were built, and that I paid the money for them to Mr. Sill.

The next item is for advances for right of way, amounting to $10,190 19.

September 22, 1858, I paid to Wm. E. Smith, right of way agent	$4,200	00
Same date, to John P. McGregor, acting as right of way agent	300	00
Same date, I paid to N. P. Stanton, for right of way purposes.	825	00
November 16, 1858, I paid Wm. E. Smith	240	00
December 31, 1858, I paid to Wm. E. Smith	250	00
Same day, I paid him	135	00
Same day, I paid him	300	00
Same day, I paid him	40	00
Same day, I paid him	250	00
Same day, I paid John P. McGregor	35	00
January 19, 1859, I paid John P. McGregor	375	00
January 10, 1859, I paid John P. McGregor	204	00
July 1, 1859, I paid H. Palmer for right of way	184	84
557 Same day, I paid J. G. Inbusch, interest on mortgage	122	40
Same day, I paid J. G. Messinger, right of way	115	00
July 10, 1859, I paid J. K. Van Horn, right of way	120	00
Same day, I paid S. B. Emery, right of way	164	85
Same day, I paid P. M. Johnson for getting right of way	159	02
Same day, I paid J. E. Arnold, att'y in right of way	175	00
July 21, 1859, I paid Brown & Ogden, int. on mortgage to Rosenthal	218	25
July 21, 1859, I paid N. J. Emmons, att'y in right of way case	25	00
Same day, I paid J. R. Warner, for right of way	51	00
Same day, I paid Benjamin Baden, for right of way	76	25
Same day, I paid J. E. Arnold att'y fees, right of way case	150	00
Same day, I paid J. S. Patten, right of way	50	00
Same day, I paid Harvey Birchard's mortgage	61	60
Same day, I paid Lydia Canfield, right of way	100	00
Nov'r 8, 1859, I paid A. C. May, int. on mortgage	294	44

Same day, I paid			recording deeds	7 42
"	"	"	Geo. Abert, for street com's certificates	226 57
"	"	"	John Lunnd, int. on mortgage	36 10
"	"	"	J. G. Inbusch, same	121 80
"	"	"	J. F. Luck, int. on mortgage	204 00
"	"	"	costs in Vanderpoel, Thayer & Co., case	17 50
"	"	"	costs in Hoover case	37 15
"	"	"	advertising in N. Y. Tribune	18 00
"	"	"	J. McL. Staughton, for engineering	300 00
				$10,190 19

The amounts above stated paid to Stanton, W. E. Smith, and McGregor, were paid by me under direction of the board of directors of La C. & M. R. R. by resolution. Those gentlemen were in the board, and were directed to settle claims for right of way. The deeds were taken in the name of the company, and not in the name of Mr. Chamberlain.

(Vouchers of Smith, McGregor, and Stanton, directors, for amount paid by them for right of way, and the deeds taken for right of way, settled by Mr. Chamberlain, are offered to be produced by Mr. Chamberlain.)

The sums above entered as paid on same day were not all paid same day, but entered on same day.

FRIDAY, *April* 19, 1851.

Examination of D. W. Keyes continued.

The next item in the general ac. of Mr. Chamberlain is, paid Morrill & Bowers for 5 passenger cars, $11,115 45.

Those cars were bought by Mr. Chamberlain, for the use of the road, and all run on the road, running.

558 May 25, 1859, Mr. Chamberlain paid $975, and gave two notes at 4 and 6 months, for $1,462 50 each, which have since been paid, and which amount was the price of two of said cars. July 5, 1859, Mr. Chamberlain paid cash $1,815 45, and gave two notes, 4 and 6 months, for $2,700 each; which notes have since been paid by Mr. Chamberlain, which last amounts were the price of three of said cars.

(Vouchers for these payments tendered.)

The cars so bought are Nos. 14, 15, 16, 17, and 18, passenger cars, La C. & M. R. R. The cars were put on the road before the settlement above stated.

(The next item is, paid J. A. Hoover, on mortgage, (in fact, on contract for conveyance,) $3,236 52. I gave a check for the amount of this item, and the money was paid February, 1859. There was a contract for a deed for conveyance of some of the lots now comprising depot grounds in Milwaukee, and Mr. Hoover obtained an injunction against the railroad company, and to settle it Mr. Chamberlain paid Mr. Hoover the money, and took from Hoover a deed in his own name, in trust for the railroad company. The vouchers for this item were placed on file in this suit in the district court. The lots are now used by the railroad company, several tracks cross it.

In Dec. 1, 1859, Mr. Chamberlain gave up possession of the receipts and disbursements of the road to F. A. Palmer and Prentis Dow, agents for trustees, on behalf of 2nd mortgage bondholders. At that time there were balances due foreign railroad companies, employees, and for supplies, which were paid by Mr. Dow as agent, amounting to $75,113 23. These had been all entered up to the debit of the operating account, and included in the items of expenses stated in Exhibit No. 1. After Messrs. Palmer and Dow

came in possession of the receipts, the collecteed fo the recipts which were created prior to Dec. 1, 1859, and which also are charged in Exhibit No. 1, the amount of $27,302 10. Mr. Chamberlain also paid to Palmer and Dow, cash, $11,460. He also paid a note to New England Car Spring Company, on account of purchase of 18 box cars for use of the road, $3,080 26. He also paid State taxes for the years 1858, $4,924 54. The aggregate of which payments by Chamberlain, and receipts by Dow and Palmer, amounted to $46,766 90, which sum, deducted from $75,113 23, paid by Dow, leaves a balance of $28,346 33, chargeable to Mr. Chamberlain. The entries in reference to this matter are found on Mr. Dow's books, from which I took the ac. I made the entries. The next item of Mr. Chamberlain's general account is loss on steamer Keokuk, $11,000. The steamer was bought for $24,000 by Mr. Chamberlain, for the benefit of the road of the Rapids Packet Co. I can't tell how long she ran, but should say about two months, when she lay by one season, and then was sold for $13,000. At the time the business of this road was done by the Galena Packet Company, but as they did not treat the road fairly, it was found necessary to put on an independent line of boats to protect the interests of the road. This steamer was bought, and two other steamers were put into the line to run from La Crosse to St. Paul, in connection with this road. I think that the purchase of this boat was indispensable, and I think has been of great benefit to the road, though I
559 can't tell the amount. It enabled the road better to compete with other lines, and make better terms with other lines, and has, in fact, resulted in the creation of an independent line from La Crosse to St. Paul. The benefit to the road, in my opinion, far exceeds the amount of the loss on the boat. In my opinion, the loss on the boat would have been more than made up in one month.

The manner of keeping the accounts of the road while in the hands of Mr. Chamberlain was this: The general freight agent has an accountant, and weekly reports are made, and there is a general balance account at the end of each month, showing what has been shipped to or from every station on the road. The general freight agent is the officer to whom all these returns are made, so that he has a perfect check on every station, and by his books he will know whether all the money has been collected and returns made to the cashier, from the fact that all amounts received from freight are credited to freight income. The general ticket agent keeps all accounts with different agencies; a statement of the amounts received from each agency by the cashier is furnished monthly to the general ticket agent to be credited to the proper agency, and each agency is charged with the tickets received.

Cross-examined.

I think that in my testimony in chief I fully stated the reasons of my knowledge of the correctness of Exhibit No. 1. I paid Boomer the amount of money stated; I know it was paid, and I know that the bridge was built. At the time the work of moving engine and cars across the Wisconsin River was done the road was not in possession of Mr. Chamberlain. The bridge was not completed as soon as it should have been, and the directors were anxious to have the track laid on the other side, and they directed Mr. Chamberlain to go on and get the cars and engine across the river. His tools and teams were used; I think I saw the letter telling Mr. Chamberlain to go on.

DWIGHT W. KEYES.

Examination of Dwight W. Keyes continued.

MONDAY, 22 *April*, 1861, 2½ p. m.

Dweight W. Keyes being further cross-examined, says:

Question. What is the first item of the account on the books?

(Objected to. Admitted.)

Answer.

1857, Oct.	13.	Paid L. Everingham for back charges.....	1,000
Oct.	14	.....do.....	500
	15	.....do.....	1,000
	19	.....do.....	500
	20	.....do.....	1,000
	21	.....do.....	500
	22	.....do.....	500
	24	.....do.....	1,000
	27	.....do.....	1,000
	29	.....do.....	1,000
	31	.....do.....	1,000
	31	Sundry bills.....	127 32

560 TUESDAY, 23 *April*, 1861.

The foregoing amounts are back charges paid by the road to other roads or transportation companies for their charges on freight received from them for shipment over this road, which amounts are subsequently refunded to this road, but neither amount is included in the statement marked Exhibit 1.

I have the vouchers for the disbursements incurred in getting the engine and iron over the Wisconsin River. One of these vouchers is missing, (being $27 21 for lumber, &c.,) but I paid the money myself. There is one charge among these for use of team, $49. That team was Mr. Chamberlain's, and no money was paid out to others on that item, and there is no voucher for it. In constructing the road Mr. Chamberlain never took receipts on the pay-roll from laborers for their work. I paid the men engaged in this work. The amount of the labor done by the men I know from the returns of the foreman.

I know what made up the amount of Mr. Chamberlain's judgment against the railroad company. The men who did the work in repairing gravel cars were in the employ of Mr. Chamberlain. Of the item for repairing those cars, $69 62, was paid out for castings put upon them.

In regard to the amount paid L. B. Boomer for stone, &c., for canal bridge, Portage City, $1,089 81, that sum was paid him in account.

Question. Have you the voucher for that payment?

(Objected to by Mr. Chamberlain's counsel, because the voucher is inadmissable, and not evidence—the objection being that Mr. Chamberlain is not under obligation to produce his private vouchers.) (Admitted.)

Answer. I have a receipt for monies paid him on settlement of account, including this item. I have his receipt for $23,410 10.

The road was built beyond the La Crosse depot under and by direction of the engineer of the road. It was no part of the work done under the contract for the construction of the road. I have these vouchers here.

(Witness produces them.)

This charge is merely for money paid out for labor. The materials were furnished by the company. No profit or commission was charged by Chamberlain. The vouchers are pay-rolls which make up the amount.

WEDNESDAY, 24 *April*, 1861.

Dwight W. Keyes, being further cross-examined, says:

I have here the schedules of the vouchers for the expenses for October, 1857.

The items in Lansing Bonnell's bill were bought for the use of the machine shop and car shop.

DWIGHT W. KEYES.

561 *Deposition of Daniel L. Wells.*

Daniel L. Wells, being duly sworn, says:

I made the charge for team work, horses, &c., in getting the engine and cars over the dividing ridge. The charge was correct, and the work was done. They were taken over the ridge before the tunnel was completed, because the company wanted to run the road bey ond the ridge, and the tunnel was not completed. These bills show the items of the charge. I know this bill of $76 58 is correct, as well as the bill of $53. The bill of $76 58 was incurred in January, February, and March, 1858.

Of this bill of $1,116 30 I paid a portion myself. Mr Chamberlain & Co. furnished the chairs and spike mentioned in the bill for repairs to the road after it was completed to La Crosse. I was the partner of Mr. Chamberlain in the firm of S. Chamberlain & Co. The other items of the bill (besides chairs and spike) are cash paid by me for S. Chamberlain. The chairs and spike were furnished and charged to S. Chamberlain by the firm, and he furnished them for the road. We had the chairs and spike on the line of the road left after the completion of it, and the men on the road used them in repairs; sometimes I knew of their taking of them—sometimes they told me of it.

I had charge of the work of getting the engine and cars over the Wisconsin River. That was done just before Mr. Chamberlain took the lease. There was no agreement that I know of between Mr. Chamberlain and the company what price should be paid for the work. These disbursements were all necessary in doing this work.

I know the fact that a deduction was made for incompleted work this side of New Lisbon, sufficient as estimated, to complete the road to that place, at the time of the settlement between Mr. Chamberlain and the company at the date of the rendition of his judgment. That work has been done since the judgment was rendered.

THURSDAY, 25 *April*, 1861

Daniel L. Wells. being further examined, says:

I know that Chamberlain's men repaired gravel cars of the La Crosse Railroad Company, and that they sent in a bill for it, and that this is the amount of the bill.

I know that Mr. Chamberlain paid Mr. Boomer the amount of the item in his account for stone and cement for the mason work of the drawbridge at Portage City. I made the arrangement with Mr. Boomer for it.

The work on the extension of the road beyond the La Crosse depot was done in the fall of 1858. It was between an eighth and a quarter of a mile double track. I superintended the work, and I know that the account rendered for it is correct, and represents the actual disbursement of Mr. Chamberlain for labor only in building the work, the company furnishing the materials. The amount is $2,656 75. It was built in the water
562 in great part. The road could not have been operated without this extension. It was used as a side track partly for switching cars.

The road was completed in the fall of 1858, and this work was done immediately afterwards.

I know the station buildings at La Crosse were built under the charge of Mr. Sill. They were necessary for the operation of the road.

DANIEL L. WELLS.

Deposition of R. D. Jennings.

Royal D. Jennings, being duly sworn as a witness for the defendant Selah Chamberlain, says:

I am general freight agent for the La Crosse railroad. I have been acting in that capacity from a date previous to October, 1857, and have been employed on the road since the 4th July, 1855. I was general freight agent all the time that Mr. Chamberlain was in possession of the road, and now hold that position under the receiver. Mr. Keyes paid the accounts, and I paid the pay-rolls all or part of the time Mr. Chamberlain was in the possession of the road. He paid the pay-rolls what time I did not pay them.

He was cashier of the road during that time and paymaster of the accounts. He is now pay, and A. Miller is cashier. Mr. E. C. Jennings kept the general books of the road while Mr. Chamberlain had possession of the road, and has done so since then, and did so before. John M. Kimball was general ticket agent most of the time that Mr. Chamberlain was in possession, and has so acted ever since then. Edwin H. Goodrich was manager of tho road while Mr. Chamberlain was in possession, and has so acted ever since then. I think the same system of keeping the general accounts of the road prevails now that prevailed while and before Mr. Chamberlain was in possession of the road.

I can tell the amount of income from the freight business of the road from October 1st, 1857, to December 1st, 1859. The amount for each month is the same stated for each month in this statement, marked Exhibit No. 1, now shown to me. I have not footed up the sums, and do not know the gross amount.

While Mr. Chamberlain was in possession the duty of making monthly reports devolved upon me. I made my reports from the books. Those relating to the freight business only were kept under my immediate supervision. The amounts of the passenger receipts stated in this statement (Exhibit No. 1) is the same as the amounts reported by Mr. Kimball every day to Mr. Keyes, during the same period, as shown by Mr. Keyes' books. From my familiarity with the general business of the road, I believe the figures of this statement (Exhibit 1) to be correct. I did not compare this statement as to the passenger receipts with Mr. Keyes' books, but I know it was compared. I got this statement, not from his books, but from the general books kept by Mr. E. C. Jennings. The freight accounts only are compared in my office with Mr. Keyes' books.

R. D. JENNINGS.

563 *Deposition of John M. Kimball.*

John M. Kimball, being produced as a witness for the defendant Selah Chamberlain, and duly sworn, says :

I have charge of the ticket department of the La Crosse and Milwaukee railroad, under the receiver, and have had that position since the first of January, 1857. I held it all the time that Mr. Chamberlain was in possession. My business is to furnish the different stations with the tickets used on the road, charging them to the local agents. Those agents on the line of the road report to me every week their sales, and are instructed by me

to remit, and they do remit, to the cashier of the road. At the end of each month the cashier furnishes me a statement of the amount received by him from each agent, and I give to the agents credit on my books for those sums. I also check the receipts of tickets collected on the train, to see if they correspond with the report of tickets reported sold by the agents. These agents also report to me the tickets on hand every thirty days, and thus any variations are discovered. I therefore know what amount of money is received by the cashier on the sale of tickets. Every month I can tell the state of the accounts on sale of tickets. I can say that the amount received by the cashier, as reported by him to me, have always been found correct.

Mr. E. C. Jennings also hands me the statements of the money collected by the conductor on each train as it comes in.

Through tickets are also sold by our road to points on other roads, and our tickets are also sold by other roads, and I keep the accounts with the other roads, and I furnish every thirty days statements of the balance of those accounts to the chief clerk, Mr. E. C. Jennings.

J. M. KIMBALL.

Deposition of W. R. Sill.

FRIDAY, 26 *April*, 1861.

William R. Sill, being further examined as a witness for the defendant Selah Chamberlain, says:

I saw this paper executed. (Lease from Thomas Spence and Benjamin W. Reynolds to Selah Chamberlain, dated 29 July, 1858, recorded in the office of the register of deeds of La Crosse County, Wisconsin, 29 July, 1858, in vol. 17, p. 24, of which a copy is filed in this court, in *in* the above-entitled cause, in which Greene C. Bronson, Shepard Knapp, and James T. Soutter are complainants.) I know the signatures of the parties. This paper (copy from the files endorsed, "filed Feb. 6, 1861") is a copy of this original lease. The grounds were leased for depot uses for the La Crosse road, as stated in the lease. Depot buildings were erected on the grounds described in the lease. There were other buildings besides those put on this particular tract of land. All were built by Selah Chamberlain, for the purposes of the road. The receiver of the company is now in possession of this piece of the land, and of all the buildings I have mentioned, and
564 they are now used and occupied for the purposes of the road, and have been so used and occupied since the road was opened. The buildings and the turn-table, which were erected by Mr. Chamberlain, were built under my superintendence and cost, in the summer and fall of 1858, and were then worth $12,190 95. I built them as cheap as they could be built, I am satisfied. I generally took vouchers for my disbursements in building those buildings. Some very small disbursements I returned in a voucher of my own. I returned the vouchers to Dwight W. Keyes, (vouchers shown to witness, attached to the deposition of Dwight W. Keyes, filed in this court, in the above entitled cause, wherein Bronson, Soutter, and Knapp are complainants, February 2, 1861.)

These are the vouchers for the disbursements in the erection of those buildings, and the schedule attached to them is correct.

I am very positive that at the time the lease was made a deed of the premises described in the lease was made by the lessors to the La Crosse and Milwaukee Railroad Company, which deed was made and recorded after the lease was recorded, so as to give the lease priority. What I did in receiving the deed was at the request of Moses Kneeland, one of the directors, and of P. M. Johnson, the right of way agent of the company.

These amounts mentioned in the schedule were actually expended by Mr. Chamberlain. They include a charge of $300 for my services in superintending the construction of the building. There is now commission or profit charged.

I reside in La Crosse, 200 miles from this city of Milwaukee. I have come here four times to attend this examination before the masters, attending as a witness for Mr. Chamberlain, one day at each trip.

W. R. SILL.

(The counsel for the defendant Selah Chamberlain reads in evidence a deed from Jacob A. Hoover and wife to Selah Chamberlain, dated 18 February, A. D. 1859, and recorded in the office of the register of deeds of Milwaukee county, Wisconsin, on the same day, in vol. 64 of deeds, on pages 307 and 308, a copy whereof is filed in this court in the above-entitled cause, in which Greene C. Bronson and James T. Soutter are complainants.

Also the contract and notes executed by the La Crosse and Milwaukee Railroad Company, dated 7 June, 1858, of which copies are hereto annexed, marked Exhibit No. 7.)

D. W. Keyes recalled.

Dwight W. Keyes, recalled as a witness for the defendant Selah Chamberlain, testifies :

These papers are the vouchers to which I referred in my former examination. I paid the money, as I have stated, on receiving these papers from Mr. Chamberlain. I supposed these vouchers were filed in this court, as they were taken from me for that purpose.

DWIGHT W. KEYES.

565 *Deposition of A. G. Miller, jr.*

Andrew G. Miller, jr., being produced as a witness for the defendant, Selah Chamberlain, and duly sworn, says :

I am cashier of the La Crosse and Milwaukee railroad, and have acted in that capacity since last June. I have familiarized myself with the manner in which the books are kept in the different departments of the business of the road. As far as I have had occasion to see the books, the system of keeping the accounts now is essentially the same as practiced from 1 October, 1857, to 1 December, 1859. I have followed the same system nearly as that in use before I came. Each agent along the road sends to the cashier packages of money, with a sheet stating how much is on freight and how much on passenger business, for which money the cashier returns to him a receipt, and enters the amounts on the debit side of his cash book. The agent also returns weekly to the freight and ticket departments, separately, statements of the amounts of money he has transmitted to the cashier, and the cashier returns to the freight and ticket departments a copy of these entries on the cash book, so that any discrepancy between the amount of money received by the cashier and the amounts so returned by the agent would at once appear on the general books of the freight or ticket office. All payments, except on the pay-rolls, are made by the cashier, and for those the cashier pays the money to the paymaster, and he returns paid pay-rolls to the same amount. All vouchers, after being approved by the manager or receiver, are entered upon the general books to the credit of the parties and are paid by the cashier on warrants ordered by the manager, which warrants are entered upon the general books to the debit of the parties, so that an overpayment or an underpayment would be at once discovered. The books in this manner at once show the amount of the receipts, of the

operating expenses, and of the net revenue of the road. If there is any mistake anywhere, the books will not balance. I know of no way in which any money could be earned by the road without its appearing on the books. I do not know how money could be misappropriated by any agent of the road, (except way moneys collected by the conductors of trains,) or by the superintendent or lessee of the road, without immediate discovery. I know of no possible way in which Mr. Chamberlain, when in possession of the road, could have misappropriated money earned by the road unless it appeared on the books of the company in the proper department.

The Post Office Department is charged on the general books each month with the amount due from it to the company, according to the contract. Every quarter of the Post Office Department sends an order to the manager of the road to collect from the different post offices along the road any monies they may have on hand, and a return of the monies so collected is made to the department, when a draft is sent from the department for the balance, and these two amounts, taken up by the cashier and returned to the general bookkeeper, must balance the amount first charged by him to the Post Office Department.

566 So the amount due from the express company is debited to it on the general books, and the amount paid to the cashier by it is credited to that company.

The receipts from telegraphing are reported by the operators, who are generally station agents.

A. G. MILLER, JR.

Deposition of E. H. Goodrich.

SATURDAY, 27 *April*, 1861.

Edwin H. Goodrich, produced as a witness for the defendant Selah Chamberlain, and being duly sworn, says:

I am manager or superintendant of the La Crosse and Milwaukee railroad, and I have been in that position since October, 1856. I am familiar with the system of accounts kept on the road, and with its business and income. The books show correctly the earnings of the road from all sources from October 1st, 1857, to December 1st, 1859, and the disbursements during the same period. I have examined the general accounts during that period. Each department is a check upon the other. They all check up together. There were no discrepancies during that period except a few errors, which were discovered and corrected.

All bills are certified by some proper agent of the road, who knows of the purchases and the necessity and correctness of the same.

The road is now, and was while Mr. Chamberlain was in possession, economically operated. I do not think there were any useless or extravagant expenditures. We always bought for cash, and got advantageous terms. We bought mostly of manufacturers and commission agents. I know, from my former mercantile experience and otherwise, that we buy of favorable terms; on better terms, I think, than the merchants buy.

We employ about 200 men on the line of the road, engaged in track repairs, since the completion of the road. At the time that the contractors on the Northwestern road paid 90 cents to $1 per day we hired men at 70 to 75 cents. We furnished them steady employment, which is the reason, I suppose, why we got them cheaper. We paid laborers and other employees the same rates of wages when Mr. Chamberlain was in possession that we now pay, with the exception of some to whom we pay now more than we paid then on account of their increased experience and skill. Mr.

Chamberlain, when in possession, enforced on me continually, and was constantly seeking opportunities to exercise the duty of reducing the expenses to the lowest possible rate, and I and he continually acted on that policy.

The depot buildings at La Crosse were erected because they were indispensably necessary to the business of the road. The road could not be operated without them. The road was built into the water, that boats might come up to it, and the depot was built on piles there.

I know of Mr. Chamberlain's doing some ballasting on the road between here and Beaver Dam. I know that the ballasting was done under the order of the chief engineer of the company, made a short time before the
567 work was done. I have seen that order. It was made out by Mr. Woodward, the chief engineer, and handed to me. I do not know where it is.

I know of the purchase of the steamboat Keokuk, on the Mississippi River, made September 1st, 1859. Mr. Chamberlain purchased her at Keokuk. We purchased that boat and another one, the Black Hawk, for the porpose of establishing a daily line between La Crosse and St. Paul, in order to protect ourselves against the Minnesota Packet Company, which was taking the business that should come over the La Crosse road to other points below La Crosse. That company refused to bring freight to us, preferring to carry it to Prairie du Chien or Dunlieth. They would not make connections with us, keeping back purposely their boats. Their object was to get the increased price for carrying passengers and freight below La Crosse. Individual members of that company said they would break down the La Crosse road.

Mr. Chamberlain bought only an undivided half of the two boats, the owner of the other interest consenting to put the boats into a daily line from La Crosse to St. Paul. Afterwards the other owner became dissatisfied with the line, and there was a division, Mr. Chamberlain taking the Keokuk, which cost $24,000, the price which Mr. Chamberlain originally paid for the half interest in the two boats. The two boats ran about 15 days, and the Keokuk ran until the close of navigation that season. The Black Hawk was given to the other joint owner, on account of being of too heavy draft, and a line was then made up with Mr. Davidson, who put in two boats which, with the Keokuk, made a daily line until the close of navigation. The Keokuk was not run in the season of 1860, and was sold in the spring of 1861 for $13,000, leaving a loss to Mr. Chamberlain of $11,000. The revenues of the road were increased by the running of the Keokuk, because we could not, without the purchase, secure a daily line to St. Paul, although we made repeated efforts to do so. The revenues were at once favorably affected by getting the daily line. The increase of the net revenues of the road caused by the establishment of the daily line, of which the Keokuk was the basis, was, in my judgment, more than three times the sustained on the boat. Not only was this daily line established, but the other company was also forced to run its boats to La Crosse, thereby increasing our business by the competition between the two lines. The road kept up its rates, getting full rates on all the increased business. The road contributed nothing to the support of the boats. The profits and losses on running the boats were received and borne by the owners. The road had nothing to do with them. The balance sheet of this boat showed a nominal profit of about $1,000, but there were outside expenses and claims against her which the clerk making it knew nothing of, and the boat really made nothing. Mr. Chamberlain paid for the boat himself, and operated her at his own expense. The object of buying her and putting her on was to enable the road to earn money. It was not expected that the boat would earn money, and she did not earn anything. I think Mr. Keyes kept her accounts, and can state all the facts

about them. Before buying the boat Mr. Chamberlain consulted with
568 myself and members of the board of directors, and we all approved of the plan. It was universally understood that the purchase was necessary. I thought it was necessary for the road, and think so still. The next year (1860) we (the receiver, Mr. Crocker, being in possession after June 9th) again commenced doing business with the Minnesota Packet Company, and continued until July or August. The company made the same efforts to prevent business from coming over our road as in the previous season. For instance, in order to prevent passengers from making connections with our road, the boats of that company would often, within a mile or more of La Crosse, tie up to the bank or otherwise delay and wait until after our trains had gone. In every way they endeavored to prevent passengers from stopping at La Crosse. In order to get any business from the boats, we were compelled to wait until long after our regular time, and then to run our trains at very great speed and corresponding expense in order to make our connections east. These things were done both seasons. The receiver became satisfied of the necessity of an independent line, and an opportunity offering to create one he embraced it. Then a competition commenced between that line (Davidson's) and the regular line (Minnesota Packet Company,) and a reduction of rates followed. The necessity of the line was so apparent to all parties interested that the receiver persisted in the contest, although rates of fare were reduced to one dollar from St. Paul to Chicago, and rates on freight were reduced one half. The Chicago roads took their proportion of those rates. We did the same thing. We also contributed to support the boats by giving them a larger share of freight earnings, so as to enable them to continue the competition. The Lake Shore road from here to Chicago, and the Chicago and Northwestern Road, joined us in carrying out this system, and the land grant bondholders and the second mortgage bondholders of this road approved of it. The loss to the Minnesota Packet Company was so severe that the rates were restored before the end of the season, and they agreed to give us an independent line this season, which they have done. That is the object which we contended for, and had in view when the Keokuk was purchased, and the result, I think, would not have been attained by this time but for the purchase of the Keokuk. We had an agent (Capt. Cotton) travelling to all the various points on the Ohio and Mississippi Rivers for some two or three months during the dull season of 1859, trying to get a daily line established between La Crosse and St. Paul, but we could not succeed without purchasing the boats or an interest in them. We could not buy a boat suitable for our purpose cheaper than the Keokuk at the time she was purchased, and when we had done with her she could not be sold for more than the price obtained for her. Mr. Chamberlain made frequent attempts to sell her, and was finally obliged to leave it to arbitrators to determine her price when she was sold. She was bought by the Minnesota Packet Company, her price being fixed by the arbitrator, who was a competent, disinterested steamboatman chosen by Mr. Chamberlain and the company. I myself tried to sell her for Mr. Chamberlain, and never had an offer of over $10,000. I do not know her value.

EDWIN H. GOODRICH.

569 *Deposition of Selah Chamberlain.*

MONDAY, 29 *April*, 1861.

Selah Chamberlain, one of the defendants, being produced, sworn, and examined, says:

Question. Does the income account now shown to you and marked Exhibit No. 1, as explained by the testimony of the witness, Dwight W. Keyes,

show a truthful statement of the income and expenses of the La Crosse and Milwaukee railroad while you were in possession, from the first of October, 1857, to the first of December, 1859, so far as you know or have reason to believe; and will you state your means of knowledge on the subject?

Answer. It does. I attended to the business while the road was in my possession, and often examined the accounts, vouchers, and books, and I believe that they were all kept correctly, and this paper shows the result from the books. There was no income from the road of any kind which did not go upon the books. The sums stated as disbursements were faithfully and truly disbursed in the manner shown by the accounts, so far as I know. I kept close watch over the whole business, giving my whole attention to it, being determined to save something out of it if possible. The system of keeping the accounts was about the same then as now, and I think there are no undiscovered errors. I that I received no more from the road than is charged to me on the books,

At the time the estimate was made, about the first of October, 1857, I claimed and believed that the work done by me had been largely underestimated. I also believe that the re-estimate made by Sill and Woodward is on some items too low. The reason for that is that I was on the work all the time, had made it my business to attend to the work, had the profiles, and knew approximately the amounts of work done. In the last estimate the one item of grubbing and clearing was estimated too low by several thousand dollars.

The $5,000 draft heretofore testified to by Keyes, was charged to me in account, never credited to me, and was never paid, because the company notified me it had no funds in the drawee's hands, and requested me not to present it, and I did not. No part of it has been paid.

I know the work of getting the engines and cars of the Wisconsin River was done by me at the urgent request of the La Crosse and Milwaukee Railroad Company. They agreed to pay me the cash disbursed and twenty-five per cent. for furnishing men and tools, for superintendence, commission, and profit. Mr. Daniel S. Wells was our general manager on the road, and he superintended this work for me. The bills were usually brought in at the end of the month, and when brought in, if correct, they were certified by the engineer and handed to me to bring here for settlement with the company. I believe the amount of the charge to be correct. It was not included in our settlement, made at the time of the judgment, as I think the work was then going on. No part of it has ever been paid. The company was in a great hurry then to get their road in running order.

570 The railroad was completed by me from Portage to New Lisbon, and therefore the item of $56,500 for completing it, estimated by the chief engineer at the time of the judgment, is due to me. No part of it has ever been paid. The gravelling between Milwaukee and Beaver Dam was done under a contract between the company and myself, dated the 26th of September, 1857. The exact number of yards I do not know, except from the estimate of the chief engineer. I believe it to be correct, and no part of it has been paid.

The chief engineer was in the employ of the La Crosse and Milwaukee Railroad Company, and was never in my employ, nor did he receive at any time from me any compensation or remuneration. Mr. Staughton received from me $200 or $300 at the end of his term, after the road was completed to La Crosse, which the company then owed him, and I paid him at their request (they having no money then,) and charged the company. He had no interest in the contracts, or any of them, and had no pecuniary connection with me or my business.

I know we repaired the gravel cars, and that the bills came in, and I was

never paid for the work. I believe the bills to be correct. My instructions were to make out no bills but what were correct. The work was done under an arrangement between the company and myself that I should repair them, and he paid the disbursements and 25 per cent. on the amount. The gravel cars were at the gravel pits, some 35 miles from Milwaukee, at Whitman's Island, (so called,) and they could not be brought in here without great trouble and expense, and without delaying our men. The repairs were made, more or less, during the whole time that the cars were in use there. We erected a shop there for the purpose. We had thirty regular dump gravel cars, and some platform cars besides. Mr. Boomer had some stone on hand after completing the Kilbourn City bridge, and he had stone-cutters there who had been at work on the bridge. We bought the stone of him, hired him to cut it, and, according to the books, so much money was paid him for it. I did not in person pay it, but I allowed the amount, $1,089 81 as paid, receiving the voucher for that sum, and I have no noubt it was paid. I never got any part of it back. I made no charge for commission or profit on it. I know that the money was paid out of my funds (derived from the receipts of the La Crosse and Milwaukee railroad) for interest, sinking fund, exchange, and advertising, as stated in Mr. Keyes' testimony, (which I heard.) I have never had any payment except by charging it in the account.

I was present part of the time when the work was done of getting cars and engine over the dividing ridge. We laid a track over the hill, and had blocks, tackle, ropes, and tools, and we hauled a passenger engine and cars over, so that the company might use them the other side of the tunnel for carrying passengers before the tunnel was completed. It cost the amount charged, ($53,) and there was no profit to me on the work.

The charge of $76 58 for lumber for water tank was paid for the company out of my money, and I never got any of it back. That is all I know personally in regard to it.

571 We had chairs and spike left after completing the road, which were used by the repair men in repairing the road. The instructions were that the foreman of the repair gang should take them as he needed them, and make returns of the amount; and the amount returned was $1,116 30, for which I never got my pay. There was no profit to me on them. The different men who used them took them.

My contract for completing the road to La Crosse (from Tomah) included the road to the river at La Crosse. The depot was afterwards located at the point, and in order to work the road the track had to be extended south, along the river, between an eighth and a quarter of a mile, for which I charged only the actual amount paid out. That track is now in use, and is indispensable to the operation of the road at that point.

I paid out for the depot buildings at La Crosse $12, 190 95, charging no profit or commission.

I know of Mr. Keyes paying out most of the money charged as paid for right of way, being present frequently, and I myself negotiated the settlements in some cases.

I purchased the cars from Morrell & Bowers, for which I have paid $11,115 45, and the cars are now in use on the road.

The amount of $3,236 52 was paid to Jacob A. Hoover for a balance of purchase-money on a lot which the company had contracted to buy of him in Milwaukee, because he had obtained an injunction preventing the cars from running over the lot on account of the non-payment of the money.

So far as I know, the statement in Mr. Keyes' testimony as to the amounts of money charged to me as receipts of the road before 1 December, 1859, and actually collected by Prentiss Dow, $27,302 10, is correct; also relating

to the disbursements made by Mr. Dow, on ac. of operating expenses previous to December 1st, 1859, which had been credited to me, $75,113 23. I paid him, however, myself, $11,460 00, and I paid a note to the New England Car Spring Co. of $3,080 26, which Dow was to pay, and was credited for, and for which I was not credited. I also paid $4,924 54 State taxes, which is not credited to me, but is credited, I suppose, to Mr. Dow, as paid by him. These payments were all made during the month of December, 1859, and therefore they do not appear on the books kept by me while in possession, nor are they included in the statement, Exhibit No. 1. I have charged no percentage, commission, nor profits on the work done, or disbursements made by me for the road after I took possession, as lessee, under the mortgage or lease, on account of the provisions of that instrument, by which I was to have twelve per cent. interest on the amounts due me, and also $200,000 stipulated damages.

I deemed, and still believe, the purchase of the steamboat Keokuk of the greatest importance to the road, and the result has shown it. It was necessary in order to make the road worth anything for through business. Mr. Goodrich has explained the matter as fully as I could do. The boat only ran about two months, and did not make any money. She had to compete with the other boats, and to carry at reduced river rates. There is a matter yet unsettled connected with her earnings, and my impression is that there
572 was a small loss on the season's business. There were bills to pay not included in the clerk's statement, which, I think, overbalance the apparent profit. I was not in possession of the road next season, and the boat did not run. I made an arrangement to sell the boat that season, but the purchaser refused to carry it out, and she was not sold until the spring of 1861, I think in March, when I could not get no more for her than $13,000. I paid $24,000 for her out of my own money, and could then get her for no less. I made the best bargain for her that could. The only object I had in purchasing the boat was to protect the road and enable it to make money. I did not expect to make anything off the boat.

S. CHAMBERLAIN.

(The examination of Mr. Chamberlain was suspended at this point, and further proceedings postponed at the request of Mr. Carpenter.)

MONDAY, 13 *May*, 1861.

The counsel for Selah Chamberlain, defendant, reads in evidence the lease or mortgage executed by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, dated 26th September, 1857, under which Mr. Chamberlain took possession of the railroad, a copy of which is on file in each of the above-entitled causes, marked Schedule A. Also the contract, of which a copy is filed in each of said causes, marked Schedule B, and of which a copy is also hereto attached, marked Exhibit No. 4, dated also 26 September, 1857. Also a contract between the said railroad company and Selah Chamberlain, dated 8 December, 1857, of which there is on file in each of said causes a copy, marked Schedule C. Also a report to said railroad company, signed by William R. Sill and E. W. Woodward, dated March 25th 1858, a copy of which is filed in these causes, marked Schedule D, (in suit of Newcomb Cleveland *vs.* Selah Chamberlain, impleaded, &c, marked C.) Also the assignment of the judgment of Newcomb Cleveland *vs.* The La Crosse and Milwaukee Railroad Company, executed by Newcomb Cleveland to James B. Cross in trust for Selah Chamberlain, dated ————, of which a copy is on file in these causes, marked Schedule E. Also deed from Jacob A. Hoover and wife to Selah Chamberlain, dated 18 February, 1859, recorded in the office of the register of deeds of Milwaukee County,

Wisconsin, on that day, in volume 64 of deeds, pages 307 and 308, a copy whereof is on file in these causes, marked F.

(The counsel for the defendant Chamberlain now proposes to offer proof of the consideration of the judgment recovered by him against the La Crosse and Milwaukee Railroad Company, heretofore mentioned, entered in this court October 2d, 1857, in obedience to the order of the court; protesting, however, that the said judgment is sufficient evidence of the indebtednes of said railroad company to said Chamberlain, and also that there is no party before the court in these causes entitled and in a situation to attack or impeach the said judgment.)

The counsel for the defendant, Selah Chamberlain accordingly offers, under protest, as above, and reads in evidence a contract between the said railroad company and said Chamberlain, dated 20 November, 1856, a
573 copy whereof is hereto attached, marked Exhibit No. 8. Also a contract between the same parties, dated 20 January, 1857, of which a copy is hereto attached, marked Exhibit No. 9.

The counsel for the defendant Selah Chamberlain further reads in evidence, under and pursuant to the stipulation herety attached, under protest as aforesaid, the depositions of witnesses taken in a cause formerly pending in this court, in which Newcomb Cleveland is complainant and the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain and others are defendants, which cause has been appealed to and is now pending in the Supreme Court of the United States, to wit: The deposition of Charles S. Gregg, also of Thomas Daniel, also of Don J. Whittemore, also of Isaac C. Brewer, also John McLean Staughton, also of William R. Sill, also of Moses Kneeland, also of Ezekiel W. Woodward, together with the exhibits thereto annexed, marked, respectively, A, C, D, E, F.

A printed copy of which depositions and exhibits, with sundry corrections in writing of references and typographical errors, is herewith returned and and filed, marked Exhibit No. 29.

The counsel for Fleming and others, judgment creditors, objected to the said depositions and each of them only as being immaterial.

Selah Chamberlain recalled.

WEDNESDAY, 15 *May*, 1861.

Selah Chamberlain, recalled and further examined on his own behalf, answers and says:

The amount estimated by Mr. Woodward as due to me on the first of October, 1857, was $1,076,450. I claimed that the estimate was too small.

A judgment was entered in my favor against the La Crosse and Milwaukee Railroad Company in this court, on or about the 2d day of October, 1857, on a note given to me by that company on the first day of October, 1857, for $629,089 72. The amount of that note was arrived at in this way: My account, herewith produced, (marked Exhibit No. 10, and hereto attached,) was settled by the company on the first of October, 1857, and the note given to me for the amounts of the two balances shown. The balance of $110,366 72 was due me on work done on the eastern division, and the other balance of $518,723 was on work done on the western division. I claimed that more was due to me than was allowed to me in this settlement by the company. The work had been done under two contracts, one for the eastern and one for the western division.

Approximate estimates had been made monthly by the engineers of the company in charge of the work. I, as a matter of course, could not know whether those estimates were accurate or not. On them I received pay-

ment in money and in promissory notes of the company, as appears in this account, marked Exhibit No. 10, on the failure of the company in the last of September, 1857. I returned to them the unpaid notes, for which they gave me credit according to this account, and they gave me a note, as I have stated, for the whole amount at that time found to be due. In this
574 account there is an item of $4,768 65 debited to me, which had been entered on the company's books to the debit of Chamberlain & Alden by mistake, as the work was done by me, and the account paid should have been charged to me. It was really one item of work which was wrongly credited to them after their account had been settled, thus showing a balance to that amount of Chamberlain & Alden's favor on the company's books. This account, so settled, was just and true in every particular, both as to the credits and debits, to the best of my knowledge and belief, except that I had done more work than the company gave me credit for, and should have been allowed therefor in the settlement. This was the amount due me for work done, materials furnished, and money paid, exclusive of any claim for damages on account of suspension of the work.

In the month of February, 1857, (February 25th,) I applied to the railroad company for one hundred and fifty thousand dollars of the land grant bonds, which privileged stock at eighty per cent. on the par value of the bonds, which were to be deducted from the amount of my final estimate on the completion of the road to La Crosse. On this application the company delivered to me, in bonds and stock, one hundred and nine thousand and some odd dollars. This amount, on my entering into a new contract for completing the road from Tomah to La Crosse, about 1 January, 1858, was returned to the company to balance the account. It was agreed in that new contract that I should return this amount to the company, and I accordingly did so.

In reference to the amount of $200,000 allowed me by the company (as per Exhibit No. 4) for the suspension of the work on the road, the work was suspended by order of the company on or about the twenty-third day of September, 1857, and was never resumed under either of the contracts then in force. I claimed at that time that by the terms of the contract the company was bound to pay me the balance then due to me, and to give me, before suspending the work, the thirty days' notice specified in the contract. They admitted that they ought to do so, but they alleged that they could not pay me the balance due me, nor any part of it. We had a good deal of discussion about the matter. I claimed a much larger sum than $200,000 for the suspension of the work, and for the failure then to pay cash. I had a large force of men and horses, tools, machinery, and other materials then on the line for completing the road. I also had sub-contractors at work on various parts of the line, with whom I dad to settle, and whom I had to pay in full the retained percentage, being the full amount for work done and materials furnished, settling with them the best way I could. In some cases I had to buy their materials, tools, horses, carts, shanties. The first work done by them, and that which they had then done, was the easiest part of the work, but I had to pay them full price for it. So that I should have had to pay much more to another contractor to finish the work than they were by their contracts bound to do it for. When I entered into new contracts for the completion of the road from the Junction (Tomah) to La Crosse, the board of directors claimed that inasmuch as I had received an allowance of $200,000 for the suspension of the work on the con-
575 tract of 20 January, 1857, that I ought to take the new contract at a price much below the former contract price, which I did. I took the work more than $300,000 less than I would have been entitled to for

the same work under the contract of 20 January, 1857. The indebtedness of the company to me, which I agreed to take out of the earnings of the road, was then all due to me, and the failure to pay it damaged me more than $200,000. If it had been then paid promptly, I should have saved more than the $200,000. I devoted my time to running the road under the lease or mortgage from October 1st, 1857, to about June 9th, 1860. Mr. Dow took the receipts and made all disbursements (as agent for the trustees in the mortgage) after December 1st, 1859, but I remained in possession of and running the road, for which I was allowed no compensation, and have been paid nothing. I have charged nothing for those services in addition to the amount of $200,000 stipulated damages. I commenced work again on the road, but under a new contract, in the month of March, 1858.

At the time the damages were allowed to me I agreed to take $200,000 of the second mortgage bonds of the company at fifty cents on the dollar. Two hundred of the bonds, making the amount, were sent from New York here to apply on those damages, and were charged to me on the company's books as $100,000 cash. These are the same bonds referred to in my answers filed in these causes. I have been trying ever since I received them to sell them for fifty cents on a dollar, but have never been able to do it.

S. CHAMBERLAIN.

D. W. Keyes recalled.

THURSDAY, 16 *May*, 1861.

Dwight W. Keyes, being recalled at his own request, says:

In my testimony in regard to the expenses and receipts of the steamboat Keokuk I made an error which I wish to correct. I overlooked an account of her expenses, which I now hold, amounting to $2,104 00. I had had this bill before as a separate account, but forgot it. This is the bill. None of the items were ever charged by Mr. Chamberlain to the company or credited by the company to him. The items are all for expenses incurred in running and keeping the boat after she was purchased by Mr. Chamberlain and before she was sold.

Nothing was realized out of the earnings of the boat. Tickets were issued by the road to the amount of $127 70, which were returned to the general ticket agent, which had been included in the boat's accounts as so much profit, but from which nothing was, of course, ever realized. A barge was bought out of the boat's funds for her use, costing $450, which was included in the sale of the steamboat by Mr. Chamberlain. Twenty-seven 6-100 dollars was returned to me in cash by the clerk of the boat, of which $25 was paid to the pilot on the Des Moines Rapids for pilotage, leaving $2 06, the balance that came into Mr. Chamberlain's possession, which was the entire net receipts of the boat, so that there was a loss on the boat of the amount of this bill, $2,104 less $2 06 being $2,101 94, besides the $11,000 lost on the sale of the boat, as I have before stated.

576 (The bill mentioned by the witness, $2,104, is produced and exhibited to the masters, together with the vouchers for the items thereof.)

DWIGHT W. KEYES.

MONDAY, 20 *May*, 1861.

It is admitted by Messrs. Carpenter & Gridley, attornies for certain defendants as above stated, and by Messrs. Emmons, Van Dyke & Hamilton, attornies for Selah Chamberlain, defendant, that on the 13th day of August,

1860, an action was instituted in the county court of Milwaukee County by Mary L. Mosley, administratrix of the estate of Willis Mosley, deceased, against the said Selah Chamberlain, and that the cause of action set forth in the complaint was the death of said Willis Mosley on the 26th day of September, A. D. 1859, caused by the alleged negligence of certain servants and agents of the said Chamberlain, employed by him at that time in and about the running and operating said La Crosse and Milwaukee railroad, there being no allegation that said Chamberlain was present on the occasion of such alleged negligence or was personally guilty of negligence; that said Chamberlain appeared by counsel (Messrs. Finches, Lynde & Miller) and defended said action; that afterwards a trial was had and a verdict rendered against said Chamberlain in said action, on which judgment was rendered against him on the 21st day of December, A. D. 1860, for the sum of $4,549 34, damages and costs. From which judgment the said Chamberlain has appealed to the supreme court of the State of Wisconsin, having filed a proper bill of exceptions and procured a stay of proceedings by giving a proper undertaking for that purpose. And that such appeal is still pending.

The private books of Selah Chamberlain, defendant, are produced by him, and submitted to the inspection of the masters and the counsel.

Chamberlain recalled.

Selah Chamberlain, defendant, being recalled, says:

A suit has been brought against me in the United States district court for Wisconsin, by Eighme, for the infringement of Tanner's patent for car brakes (of which said Eighme claims to be owner) on the La Crosse and Milwaukee railroad, while I was running it under my lease or mortgage. The La Crosse and Milwaukee Railroad Company had bought the right to use the patent on that road, but Eighme claims that only the corporation had the right to use the patent; that I had no right to use it, and hence he claims damages of me for using the patent. The amount of the claim I do not remember, but it appears in the papers on file in the suit. His right to recover remains undetermined.

A suit has also been brought against me by Erwin McCall in the circuit court of Columbia County, Wisconsin, to recover damages for the killing of horses alleged to be injured on the La Crosse and Milwaukee railroad, while the same was in my possession under the lease or mortgage. That suit is still pending and undetermined.

577 One D. J. M. Loop has also brought a suit against me in the circuit court of Columbia County, for taking gravel for ballasting or repairing the road from ground claimed to be owned by him, which suit is still pending. I claim and believe that the railroad company directed my agents to take this gravel, asserting their right to do so. The work was done by a sub-contractor, and was estimated by the company's engineers, and it must have been cross-sectioned by them before any gravel was taken.

Cross-examined.

There was never any contract between me and the La Crosse and Milwaukee Railroad Company as to the purchase of the steamboat Keokuk. There was no such company that I know of then acting or contracting. The earnings of the boat were not kept by me as receipts of that company, but entirely distinct from them. I bought the boat of the Rapids Packet Company for $24,000. I sold it to the Dunleath Packet Company for $13,000, as appraised by Capt. Ward, of St. Louis.

I am the equitable owner of the judgment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company on the 7th day of October, 1857.

THURSDAY, 21 *May*, 1861.

I have been the owner of that judgment since the second day of March, 1859, it having then been purchased by James B. Cross for me.

The Hoover deed was made to me to secure me for the money paid by me.

The first contract I ever had with the La Crosse and Milwaukee R. R. Company is dated 20 November, 1856, for ballasting between Beaver Dam and Portage City. It was signed by Moses Kneeland, and negotiated by me with the board of directors.

Question. Was an officer, director, or agent of said company, or any other person or persons than yourself, directly or indirectly interested in, or did any such person ever directly or indirectly have or receive any benefit or advantage from the said contract of 20 November, 1856?

Answer. No officer of the railroad company had any interest, either directly or indirectly, in the contract; but Mr. Daniel L. Wells had a small interest in the contract by a private arrangement with me, and no other person had any. The next contract I had with the company was dated 20 January, 1857.

Question. I repeat the same question with reference to the contract of 20 January, 1857, which I put in relation to the contract of 20 November, 1856.

Answer. The answer is the same as to the last question. There was an addition to the contract of 20 January, 1855, dated 30 April, 1857, changing the work at the Ridge from a through cut to a tunnel. These are all the contracts which I had with the company up to the second of October, 1857, and under these I did all the work for which I now have claims
578 against the company, except the extra work provided for in no contract. The ballasting on the western division was done by order of the company engineers without any written contract, and the work was included in the final estimate, which went into the judgment.

Question. Did any officer, director, or agent of said railroad company, or any person who had been such officer, director, or agent, ever in any manner, directly or indirectly, have any fee, reward, or compensation, present or gratuity, or in any way or manner profit by, or be benefited on account of, either of said contracts with the said company?

Answer. Not to my knowledge. I never paid them anything, and have no knowledge of their ever receiving any benefit.

Question. Have you any reason to believe that any such person received any such benefit?

Answer. I have not.

Question. Is there any contract, understanding, express or implied, declared or honorary, that any such person ever shall, at any time, or upon any event or contingency, have or receive any benefit or advantage out of, or on account of, the avails of said contracts?

Answer. There is not. I had a very large force employed in September, 1857—I suppose equal to 1,500 or 2,000 men. I can't state the amount I paid out in September. I did not get my pay, and did not therefore pay them all. I should think my expenses for the month of September would be between $80,000 and $100,000. The work was suspended, and never resumed under the same contract. The men employed in September, 1857, were discharged then, and were not paid for labor afterwards, except those who were retained to take care of the teams and other property on the line.

Question. Will you state, estimating as nearly as you can, the several

items constituting what you claimed to be the damage suffered by you on the suspension of the work on the 23d of September, 1857.?

Answer. The first great item is the stopping of the work without notice, and not paying me, so that I had to leave the men unpaid. Another item was the agreement on my part to finish the road to New Lisbon, which I made in part consideration of the $200,000. On the suspension of the work I had a large quantity of horses, carts, tools, shanties, implements, and materials of all kinds for the completion of the road, which were thrown idle, and made comparatively worthless. The horses would eat their heads off in a little while. Another item was the profits I could have made had I gone on and completed the road under the contract of 20 January, 1857. I had to settle with the sub-contractors, and pay them full prices for all the work done; in many instances purchase their shanties, horses and tools, when the work which they had done was the easiest and cheapest part of the work. I think we had as large a force employed in September as could be profitably employed on the road. The company was crowding us all the time to get the road done to Tomah, so that they could make a sale of their land grant bonds. Keeping the horses and teamsters to take care of them for thirty days would not cost over $7,500 of $8,000. The engineer's
579 estimate on the first of October, if it had been correct, would show what the company owed me after deducting from the estimate the withheld percentage. My books show all the money which has been paid me from time to time by the La Crosse Railroad Company. The amounts are the same as stated in the account produced here, marked Exhibit No. 10.

The judgment was purchased of Cleveland, by James B. Cross, at the request of my counsel. The notes of James B. Cross, endorsed by Clark Shepardson, were given for the judgment; Cross held the judgment as security for himself and Shepardson, (together with other securities,) until the notes given to Mr. Cleveland should be paid by me, which I agreed to do; upon doing so, I was to have the judgment. I have made the payments for the judgment, so far as they have been made, and am under obligations to pay the remainder, the judgment still standing pledged for the unpaid balance. The consideration for the judgment I have paid, and am to pay with ten per cent. interest.

SELAH CHAMBERLAIN.

Deposition of H. L. Palmer.

Henry L. Palmer, being produced as a witness on the part of the defendant Selah Chamberlain, and duly sworn, says:

I was a director of the La Crosse and Milwaukee Railroad Company, and attorney for the company in September, 1857, and became vice-president of the company on the first of October, 1857. I was aware that Mr. Chamberlain had a contract with that company, for the western division of the road, and also another for ballasting on the eastern division. I know that he did work on the road in 1857, under those two contracts; I know that the company had a settlement with him, at the time that a judgment was confessed to him in the latter part of September and first of October, 1857.

Question. What do you know about that settlement, the manner in which it was arrived at, and how the balance due Mr. Chamberlain was ascertained? And generally state what you know of the merits of his claim as then ascertained.

Answer. In the first place, Mr. Chamberlain had been doing a very large amount of work, and arrearages from month to month had been accumulating

on account of work performed under his control for the construction of the western division, and his contract for ballasting on the eastern division. When we got down to the month of September, there was a large amount found due to him, on his estimates, which had accumulated during several months preceding. He was pressing for payment. In order to secure the amount which the company was owing him, and also to provide for the completion of the road to New Lisbon, the lease of the 26th September, 1857, was executed. The road was then nearly completed to New Lisbon. About the time that he took possession of the road under that lease, I think on the first day of October, it may have been on the morning of the second of October, he informed several of the directors of the company, and myself especially, as the vice-president, that he did not consider his lease a sufficient security for his debt, and he urged that the company should give
580 him a judgment for the amount due to him. It was proposed to consider the subject of giving him a judgment at the meeting of the board to be held the evening following. In order to prepare for a proper consideration of the subject, after a good deal of conversation, I that morning went to the chief engineer, Mr. Woodward, and directed him to prepare, as soon as he could, a final estimate of all the work done by Mr. Chamberlain on the road. I am not certain that it was on the first of October that I called on him ; it may have been as early as the twenty-sixth of September. Our object in getting this estimate was to ascertain the exact amount due to Mr. Chamberlain. I especially directed the chief engineer to be careful to have his estimate correct. Such an estimate as I directed to make—a final estimate—was made and returned to the office, and then a statement was prepared from the books, I think by Mr. Peabody, the bookkeeper, under the direction of Mr. Goodrich, purporting to exhibit the amount due from the company to Mr. Chamberlain at that time. These accounts or statements were presented to the board held in the evening, I think, of the first of October. A resolution was passed at the same meeting authorizing the president to execute a judgment note to Mr. Chamberlain for the amounts found to be due to him. As the accounts were first presented to the board that evening, they embraced an estimate including some work not then completed, I think, to the amount of something over $50,000. I objected to embracing that in the debt for which it was proposed to give him judgment; I urged upon the board that the company would be bound by their action as to the amount of the judgment, and that careful investigation should be had to ascertain the exact amount due to Mr. Chamberlain. The account was then corrected by striking out from it all that was embraced in it for unfinished work, to be thereafter performed, and a balance was found in favor of Mr. Chamberlain against the company for amount for which judgment was afterwards confessed, some $629,000. This balance was ascertained by taking the estimates of the gross amount of work performed, and deducting from that amount the amount of the payments made to Mr. Chamberlain on account of the work, as exhibited by the books of the company. The accounts or statements on which the board acted were, during that evening, compared with the accounts between Mr. Chamberlain and the company on its books. This comparison was mainly made by Mr. Goodrich, in connection with one of the bookkeepers—Mr. Chamberlain being present part or all of the time, and some of the other directors taking part in it more or less. I, myself, went through with the statement of the payments to Mr. Chamberlain, comparing it with the account on the ledger of the company. The meeting at which this transpired commenced early in the evening, and was concluded, I think, about two o'clock that night, lasting several hours, most of which time was occupied in the manner I have mentioned, in endeavoring to arrive at the true amount due to Mr. Chamberlain. I had no personal knowledge

of the amount of work he had performed, except that derived from the estimates returned to the office, and I don't think I had any personal knowledge of the amount of payments made to him, except such as was derived from the books of the company and such vouchers as were there, and that
581 I probably knew from time to time that payments were made to him.

Up to that time I had had very little to with the construction or financial department of the company. About the first of September, no final estimate having then been made, I was under impression that we were owing to Mr. Chamberlain between $300,000 and $400,000, and when the final estimate was made, and the balance struck, showing the amount of over $600,000, due to him, the amount surprised me ; and there being so much more due to him than I had anticipated, I insisted on a particular investigation of the accounts, to see if in reality there was so much due to him. The amount having been arrived at, the resolution was passed, directing the note to be executed with a warrant of attorney annexed, on which judgment might be entered. The damages allowed on the contract for suspension of the work did not go into that settlement, nor into the judgment. Mr. Chamberlain was there all the evening, and Mr. Woodward was there part of the evening. I had to rely on the figures of the engineer for the correctness of the estimate. I had given him special directions to be very careful, and had his assurance that the estimate was reliable. I told him that it must be as accurate as possible, but that in any event, it must not include more work than was actually done, as I did not want the board to commit themselves, by confessing a judgment for any more than was actually due ; if there should be any margin, I desired that it should be in favor of the company. I believed then, from all the information we had before us, that the amount for which that note was given was actually due from the company to Mr. Chamberlain. I thought then that it was possible that there might be slight errors in figures, but I could not discover any. I refused to the last to vote for that resolution, but it was not because I doubted the amount due, but because of the effect it would have upon the company. I have learned nothing since which would change my opinion that the amount allowed was all due, provided it was made upon the correct basis ; that is, if the work was done, as specified in the estimate, and of the character described in the estimate; of that I had no knowledge, and cannot judge, not being an engineer. I know that a re-estimate was made, but I do not know the result of it.

I am satisfied, on reflection, that I directed Mr. Woodward to make this estimate several days before this meeting, (which was, I think, on the first of October,) as Mr. Woodward went out on the road in order to make some measurements for the estimate.

I know there was an allowance made to Mr. Chamberlain for damages, the ground of which was fairly expressed, I think, in the resolution allowing the account.

H. L. PALMER.

D. W. Keyes recalled.

SATURDAY, 1 *June*, 1861.

Dwight W. Keyes, recalled as a witness for defendant Selah Chamberlain, testifies :

In my former testimony (page 36 hereof) I stated that the unpaid
582 balances charged to the operating account, and which were not paid by Mr. Chamberlain, were $75,113 23. These I stated were paid by Mr. Dow, as agent. I also stated that Mr. Dow and Mr. Palmer collected of the receipts earned prior to 1 December, 1859, $27,302 10. I also stated

that Mr. Chamberlain paid the State tax for the year 1858, amounting to $4,924 54, and some other payments, and that the balance chargeable to Mr. Chamberlain as the difference between the earnings of the road collected after 1 December, 1859, but made before that time, after deducting the payments made by Chamberlain on account of the unpaid balances of operating expenses, left chargeable to him the sum of $28,346 33.

I have some explanations and corrections to make as to these statements. At the time I made up these accounts, running since the 1 December, 1859, I had not access to the books of Mr. Dow, he being absent in New York. I made the account up from figures taken from those books before that time. I presume that other entries have been made since I took the figures. I wish to make my corrections from the balance sheet of the books of the road. That would show that the balance due from the road on the 1 December, 1859, which had been charged on those books to the account of "operating expenses" amounted to $78,450 36.

Then the amount of balance due to the road, which had been entered on those books as earnings, was $21,085 49. He had also paid some accounts which had not been charged on the books to the account of "operating expenses," to the amount of $563 75. (This last item with two items, one of $121 80, paid to John G. Inbusch, and one of $36 10, paid to John Swain, make up the item of $721 65 which appears on the debit side of the trial balance sheet taken from the books of the company on the 1 December, 1859.) There then was an account on the books of $4,900 07 in favor of S. Chamberlain & Co.; another account of $2,247 62 in favor of "S. Chamberlain, coal oc.;" another one of $1,965 56 in favor of Daniel L. Wells; also there had been in fact paid by Mr. Chamberlain on account of pay-rolls for the month of November, 1859, $2,238 29, which last item had not been entered on the books on the 1 December, 1859. These items of $4,900 07, $2,247 62, and $1,965 56, have been charged to those several accounts balancing them and credited to him. I know that these amounts were due from the road, being mostly for wood, ties, and coal furnished to the road. These sums, with the amount of $3,080 26 paid by S. Chamberlain to the New England Car Spring Company for cars, and $11,460 cash advanced to Mr. Dow, make up a total of $47,541 04, which should be deducted from the $78,450 36, leaving a balance chargeable to Chamberlain of $30,809 32.

The item of $4,924 54, State tax of 1858, I suppose was included in the amount of $75,113 23, to which I testified before, and therefore I supposed it should be credited to him; but I now see that it was not a part of that amount, and therefore it should not be credited to him.

I have now taken this account from the basis which should have been adopted in the first place.

583 I furnished Mr. Chamberlain with the data of his account previous to his testifying, which were erroneous in the particulars stated. He had no means of knowledge except from the books and from the account furnished by me.

Cross-examined.

I was cashier of Mr. Chamberlain while he held the road as lessee.

Question. Have you furnished in your testimony, or by any account or statement filed with the masters, a statement of the total amount received by Mr. Chamberlain from the earnings and income of the road while he operated it?

Answer. Exhibit No. 1 shows that amount, taken with the explanations furnished in my testimony.

Question. Have you also furnished a statement of the amount of the expenditures paid by him for operating the road, and for other purposes connected with the maintaining of the real and personal property upon the road?

Answer. Exhibit No. 1, taken with my testimony, shows it all.

Question. Do you know whether, or not, the trustees of the second mortgage, in fact, paid the balance stated by you as unpaid for operating expenses on the first day of December, 1859?

Answer. I don't know whether they have paid them all. They have paid some. They have collected the whole amount that I have stated as balances due to the road on the first of December, 1859.

DWIGHT W. KEYES.

MONDAY, 2 *September*, 1861.

Dwight W. Keyes, being further examined, testifies and says: I paid John G. Inbush, December 18th, 1858, these four coupons now exhibited here, $240, together with interest and exchange thereon, amounting in all to $254 74. I paid the amount for Mr. Selah Chamberlain, out of his funds. They are coupons on a mortgage on depot property of the La Crosse and Milwaukee railroad in Milwaukee. This sum is not included in any account heretofore testified to. The coupons are $60 each, due 1 January and 1 July, 1858, on bonds numbered A and B, given by the railroad company.

DWIGHT W. KEYES.

E. H. Goodrich recalled.

TUESDAY, 24 *September*, 1861.

Edwin H. Goodrich, being re-examined, says, (being recalled at his own request:) Since I was formerly examined in this cause I accidentally discovered the profiles and field-notes made by the engineers of the western division of the La Crosse railroad. This was some two weeks ago. They were found in a trunk used for keeping village and depot plats, in the draftsman's room adjoining my office. I had no idea of finding the profiles and field-notes there, and therefore did not seach there for them. I found them when looking for plats of depot grounds. I do not know how they came there. They are now accessible to the masters.

EDWIN H. GOODRICH.

584 Among the books exhibited and produced to us by the defendant Selah Chamberlain, were the estimate book, and the record of the proceedings of executive committee, both belonging to the La Crosse and Milwaukee Railroad Company. In the former of the said books are certain estimates signed by E. W. Woodward, chief engineer, of which copies are hereto annexed, marked Exhibit No. 38. In the latter books are certain records of which copies are hereto annexed, marked Exhibit No. 39.

The transcripts and exemplifications filed herewith, and marked, respectively, Exhibits Nos. 30, 31, 32, 33, 34, 35, 36, and 37, were submitted to and filed with us by Mr. Carpenter, on behalf of the several plaintiffs described in the said exhibits, defendants herein.

Upon the affidavit of A. Fleming, herewith returned and filed, endorsed "Filed 1 October, 1861," Mr. Carpenter, of counsel as aforesaid, made an application to us on that date to hear testimony of the character indicated in the said affidavit, to which objection was made, and we denied the said application.

Deposition of Daniel L. Wells.

District court of the United States for the district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER AND SHEPERD Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et als.*

Deposition of Daniel L. Wells, taken before the masters under the order of reference in this cause of the 11th day of March, 1861, in behalf of Selah Chamberlain, defendant:

TUESDAY, 11 *June*, 1861.

Daniel L. Wells, being duly sworn, says: I know the amount of solid rock excavation estimated by Mr. Woodward in his final estimate dated 1 October, 1857, as done by Mr. Chamberlain. The amount was 118,250 yards according to that estimate. According to the Woodward & Sill estimate the amount was 118,557 cubic yards. Mr. S. Chamberlain paid on the estimate of the engineer to Williams & Co., sub-contractors between Kilbourn City and Mauston, for excavation of 101,568 yards of rock. He also paid Garfield & Albee for 1,571 yards of rock excavation between the same points. S. Chamberlain took out a large amount of rock east of Kilbourn City, which work is charged with 700 kegs of blasting powder.

(The foregoing testimony is objected to by Mr. Carpenter, counsel for Sebre Howard, and other defendants, and is taken subject to objection for irrelevancy.)

Cross-examined.

I know of my own knowledge as to these payments being made by Mr. Chamberlain. At the time of settlement he paid them about $4,000 in cash. Williams & Co. did much other work for Mr. Chamberlain, which was mixed with this in the final settlement. He paid them fifty cents a cubic
585 yard for 101,568 cubic yards of rock excavation. Their whole account against him was over $90,000. I paid them most of the money on their monthly estimates made by the engineers of the company. On the final settlement Mr. Chamberlain paid the $4,000 cash, and gave them his notes at 12, 18, and 24 months for the balance due them.

Re-examined.

The estimates on which they were from time to time paid were the same regular monthly estimates on which the amount done by Chamberlain was from time to time determined.

DAN'L L. WELLS.

SATURDAY, 31 *August*, 1861.

Daniel L. Wells, being further examined, testifies and says:

I have counted the coupons in Selah Chamberlain's possession in Milwaukee, which are now produced here. The statement which I now produce shows the number of coupons on each mortgage paid by him, and the number not returned as paid by the Ocean Bank, where the interest was advertised to be paid, and where the money was deposited to meet them. The statement embraces among those paid only those now presented here to verify the same.

(Statement produced, marked Exhibit No. 28, and herewith returned.)

The following is a further explanation of the item of Chamberlain's account: "Damage for detention and change of line at New Lisbon, $1,121." The road had been located and some work done upon it by Mr. Chamberlain's sub-contractors, when the line of the road was changed by the chief engineer, and Mr. Chamberlain was ordered to stop, and some days elapsed before a definite location of the line was made. Mr. Chamberlain paid those sub-contractors $1,121 for the work they had done on the old line, and for the detention while the new one was located. The chief engineer fixed the amount himself.

The road was built west of Portage by Mr. Chamberlain, under the chief engineer's directions, at the sub-grade. I don't think there was a continuous mile on that division where there was ballasting found on the entire section. The ballasting done on the 45.32 miles on the division was done by train afterwards, under the directions and order of the chief engineer, and not under a written contract.

It was worth more to do the ballasting done by Mr. Chamberlain between Milwaukee and Beaver Dam than that west of Beaver Dam, because the latter was continuous, and the former was in separate patches, and there was more delay necessary; and there was also more detentions, because there were more trains running at this end of the road.

There were gravel cuts on the east 45 miles of the western division where there was ballasting enough for the mile, but there was not a continuous mile section of gravel or ballasting.

The coupons produced here are all cancelled by being punched.

DANIEL L. WELLS.

586 District court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, GREENE C. BRONSON, AND SHEPERD Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et als.*

Examination of witnesses taken in pursuance and by virtue of an order of reference in this cause of the eleventh day of March, A. D. 1861, on the part of the defendants Graham and Scott, Sebre Howard, and the Milwaukee and Minnesota Railroad Company.

SATURDAY, 15 *June*, 1861.

Present: The masters; Mr. Carpenter and Mr. Hubbell, of counsel for those defendants; Mr. Van Dyke, of counsel for the defendant Selah Chamberlain.

The defendants first above named by Mr. Carpenter, their counsel, offer and read in evidence, under the stipulation filed and herewith returned, the deposition and evidence taken and used by the complainant Newcomb Cleveland in his suit against the La Crosse and Milwaukee Railroad Company and others, in the district court of the United States for the district of Wisconsin, in equity, mentioned in the said stipulation, and they produce according to said stipulation a printed copy thereof, which is herewith returned, marked Exhibit No. 24, and also including a part of printed page 185, being the conclusion of the deposition of Lockwood L. Doty, immediately preceding the deposition of C. S. Gregg, offered by the defendant Chamberlain, and herewith returned.

(The counsel for the defendant Selah Chamberlain, objects to the admission of the foregoing depositions, on the ground of immateriality and irrele-

vancy therein. He also renews all the objections to different portions of the said depositions which are contained in the body of said depositions)

S. Chamberlain recalled.

Selah Chamberlain, being recalled, answers and says:

Question. After the purchase by you of the Cleveland judgment, did William P. Lynde, and the firm of Finches, Lynde & Miller become, and have they since continued to be, your attorneys, solicitors, and counsel in regard to said judgment, and the enforcing of the same?

(Objected to for immateriality and irrelevancy, and further, that under the order of reference in this case the masters are not empowered or authorized to enquire into the judgment of Cleveland against the La Crosse and Milwaukee Railroad Company for any purpose, or into anything connected therewith. The defendants' counsel, Mr. Carpenter, offers, in connection with this question, to prove that after the said Chamberlain purchased the said Cleveland judgment, as stated by said Chamberlain in his former examination before these masters, that he immediately employed the
587 firm of Finches, Lynde & Miller as his solicitors, and William P. Lynde, esq., of that firm, as his counsel in the suit in equity in the name of said Clevelnnd, claimant, and against the La Crosse and Milwaukee Railroad Company, and the said Chamberlain and others, defendants, which suit was commenced in this court to enforce collection of said judgment against said company, said Chamberlain and others; that the said Chamberlain caused the appeal to be taken in said cause which is now pending in the Supreme Court of the United States, and that such appeal is now prosecuted and defended in said Supreme Court by and at the expense of the said Chamberlain, and at his expense alone, and that no party or person is represented or acting on either side of said appeal except said Chamberlain, and that the stipulations which are filed in said cause, and dated subsequent to said purchase, are signed by attornies on behalf of complainant and defendant, who are retained and employed only by the said Chamberlain, and for this purpose Mr. Carpenter asks the foregoing question.

The objection being insisted upon by the counsel for the defendant Selah Chamberlain, the same is sustained, and the foregoing question is overruled by the masters.)

MONDAY, 17 *June*, 1861.

(The foregoing question and offer having been submitted to the Hon. A. G. Miller, judge of this court, and he having decided that the evidence excluded as above should be received, the question is now renewed; the counsel for the defendant Chamberlain again objects to the said question, for the reason that the same is immaterial and irrelevant, and such objection being overruled, the defendant Chamberlain answers as follows:)

Answer. I was out of the State at the time that that judgment was purchased.

I returned to the State some two or three weeks afterwards. I have never had a word of conversation with Mr. Lynde or Messrs. Finches, Lynde & Miller about the appeal. I employed Finches, Lynde & Miller on general account, retaining them and paying them a retaining fee, some time before the commencement of the foreclosure suits. I have never employed them in the appeal in the Supreme Court.

Question. Is the law firm of Finches, Lynde & Miller, who appear of record as solicitors for the complainant in the case in the Supreme Court of the United States, in the name of N. Cleveland against the La Crosse and Mil-

waukee Railroad Company, yourself and others, or is William P. Lynde, who appears of record as counsel in that appeal, acting on your employment and on your behalf therein?

Answer. I have been told by my counsel, Mr. Emmons, that Mr. Lynde would attend to it in Washington for the complainant.

Question. Do you or do you not expect to pay Mr. Lynde for his services as counsel in that appeal?

Answer. I do.

Question. Do you know of any other person or party than yourself who is employing or is to pay said Lynde for his services as counsel on that appeal?

588 Answer. I do not.

Question. Did you not direct your attorney, Mr. Emmons, at or about the time this judgment was purchased, to have Finches, Lynde & Miller, or Mr. Lynde, substituted as solicitors or counsel for the complainant in that cause?

Answer. I did not.

Question. Who employed Mr. Lynde to act as counsel in that cause after the appeal was taken?

Answer. I suppose that Mr. James B. Cross did, he having purchased the judgment.

Question. Did Mr. Cross do this by your directions or authority?

Answer. He did not. I did not know anything of it.

Question. Did not Mr. Cross, in purchasing said judgment and retaining said counsel, act for you in fact, and have you not since ratified and approved what he did, and have you not assumed to pay for said judgment and for such services of said counsel, Lynde?

Answer. He did act for me, and I have ratified his act.

(The foregoing questions are taken, each subject to the objection of Mr. Van Dyke, counsel for Mr. Chamberlain, on the ground of irrelevancy and immateriality.)

Since the judgment was purchased Finches, Lynde & Miller and Mr. Lynde are to be paid by me.

The ballasting contract (Exhibit No. 8) is the first one in order of date on which anything is due me from the railroad company. I can't recollect the date of the first monthly estimate under that contract. The estimates up to the first of May were paid in the company's notes. The notes were given to me, I think, in full of the amounts of the estimates. From the first of May on some part was paid in money, and I think some notes were given, but the months were not closed up. I can tell by going to the books about the months subsequent to the 1st May. I think the estimate for May was settled by note and cash, but I am not sure. I don't remember now how much was due me on the first of September, 1857. From May onward the monthly estimates were not settled, I think, but there was a running account. The books will show all about it while this contract was going on. I had a contract with the company for the construction of the western division, (Exhibit No. 9.) I worked from Portage City to near La Crosse under that contract, between the date of the contract and October, 1857. Monthly estimates were made of the work we did under that contract. The first estimates were paid, less the percentage which the company was entitled to retain. I received my payments sometimes from the treasurer of the company, sometimes from Mr. Goodrich, the vice-president. It was paid mostly in drafts on New York, signed by Mr. Goodrich as secretary or vice-president. When I got money it was paid by the treasurer. I kept making demands for payment on the treasurer, on Mr. Goodrich, on the directors when they were present, after they began to get slack. Mr. Goodrich was

generally in the office. He knew that I was unpaid on my contracts; whether he knew to what extent I was unpaid I don't know. The original contracts of which Exhibits 8 and 9 are copies, were executed on the day they
589 bear date. The estimates made monthly were, I suppose, intended to be made in conformity to these contracts, but I contended all the while that they underestimated the work I had done.

Question. Did you at any time have any other or different contract with the company, or any officer or officers of the company, for doing the work done under these contracts, or any part thereof?

Answer. I never did.

Question. Do you know upon what grounds the president and other officers of the railroad company represented in New York, in August, 1857, that, with the $400,000 proposed to be raised by the second mortgage, they could pay up the contractor and finish the road to Tomah?

Answer. I do not.

Question. Had you advised the president or other officers of the company that with $400,000, in addition to payments already made, they could finish the road to Tomah?

Answer. I never did. The first that I knew of such representations was what I saw in the New York papers, and I was as much surprised as anybody.

Question. Do you say distinctly and unequivocally that there was no private agreement, arrangement, or understanding between you and any of the officers of the company, that for the work done by you, for which estimates were made under either of the two contracts above spoken of, you were to be paid or were to receive, as your compensation, a less sum than that specified in the contracts for said work?

Answer. I do.

Question. In what respect did the final esimate of work done under the ballasting contract (Exhibit No. 8) differ from the sum total of the monthly estimates, made, as you have above stated, for work done on said contract?

Answer. It increased the amounts, I don't recollect now how much, and the amount for filling in Fox Lake was included in the final estimate. The final estimate for the work done on the western division increased the amount of the total monthly estimates on that division, I think, about $200,000, but am not sure. I think there was a monthly estimate for the work done in August.

Question. Were you not, in fact, paid and settled with by note or otherwise, in full for all the monthly estimates under these two contracts, up to and including the estimates for July, 1857?

Answer. No, sir; I think not. The papers already here (Exhibit No. 10) show every dollar of money that I received and the date of the payment.

Question. What evidence is there before the masters of the fact that you surrendered to the company from time to time the notes which you had received in payment for work, as shown by your account in Exhibit No. 10?

Answer. I don't know that I could say what evidence is before the masters. I don't know any but the books of the company and my own testimony. I have sworn to it.

590 *Cross-examined by Mr. Van Dyke.*

The increase in the amount of the final estimate over the total amount of the monthly estimates was occasioned by the work done by me after the last

monthly estimate was made, and by the fact of the previous underestimating of the work.

The account in Exhibit No. 10 shows the amount *bona fide* due to me from the company at the time it was made, excepting the corrections and additions heretofore testified to before the masters. There was a note with a warrant of attorney given to me for that balance on the day of that settlement. There was nothing included in that note but what was actually and really due to me at that time. The company was not able to pay me the amount due me for work done. I came to town from my office at Portage City very often after money, and could not get it except in small payments. I was doing a very large amount of work, and the company was hurrying me up to get the road completed to Tomah. About the first of September I came here with a full determination to have my pay, or to have it in some way secured, or to stop work. I at that time wanted the company to give me a lien upon a large amount of iron which they had piled up here. I threatened them with legal proceedings on my claim. They had a meeting of the board of directors. About that time they were making chattel mortgages on this very iron to secure land grant bondholders, I believe. After a long talk they persuaded me to go back and go to work, to put on a bigger force than I had, to complete the road to Tomah at the earliest possible day. They promised to pay in September at least $150,000 in money on the current estimate, and also the notes which I held as fast as they should become due. They said if I would go on, it would enable them to make sale of some land grant bonds which they had then, so that they could pay me up. I at that time wanted them to give me security on the road and place me in possession of it, when I gave up the idea of security on the iron. I wanted the receipts of the road secured to me. They declined doing it, saying that anything of that kind would injure their credit in New York, so that it would be impossible for them to negotiate their securities. At that time they promised me that, in case they should fail to make the payments as they agreed, they would secure me. I went back and went to work, and came here every few days after money. I got what is charged to me as paid in September, 1857. It went on until about the 23 September, when I was here. Mr. Kilbourn had returned from New York. I applied to him for money, reminding him of his promise. He at that time told me that they had been disappointed in selling their bonds in New York; that they had had trouble among the land grant bondholders who refused to pay up; that they had succeded in getting only a portion of their second mortgage bonds (on eastern division) subscribed for, and that they were entirely unable to pay me. Then we commenced to negotiate for security on the earnings of the road by the lease or mortgage. On the night of the 26th September the lease and the contract accompanying it were executed.

591 My only object in taking that lease or mortgage was to secure and get my pay. I worked for that and nothing else. I proposed pretty strongly to have them pay me. If there had been any other way to get any pay I would never have taken the lease, by which I had to work for my pay a second time. I did not enter into the lease with the intent to hinder or delay any other creditor of the company in any manner whatever. My only design was to get my pay. I did not know, I had no reason to suppose that the company had any such intent in entering into it. I believe their purpose in executing it was to secure to me my debt. I had no reason to suppose anything else. I had no intimate knowledge of their financial condition at that time. I was not, at that time, aware of any established indebtedness against the road other than the mortgage debts and my own claim. I heard, not from the company but elsewhere, that some notes had been given for some depot property at Madison on the Watertown di-

vision, but I did not know whether they had been paid or not. My whole claim was for work done and materials furnished in the construction of the road, and for rolling stock furnished to the road, the particulars of all which have been given in the former testimony.

TUESDAY, 18 *June*, 1861.

Selah Chamberlain, being further cross-examined, says:

The lease provided for completing the road to New Lisbon. At that time, 26 September, 1857, the grading and masonry from Portage City to New Lisbon was neary completed; entirely completed as far as Kilbourn City. The track was completed to Kilbourn City, and partly done from there to New London. The ballasting was nearly done to Kilbourn City, and a portion of it west from there. I have no other way to estimate the amount of work necessary to complete the road to New Lisbon than the engineer's estimate, made at that time, which was some $56,000, as appears by the evidence already in. I presume that amount was about correct. That was the only work not then done, which, by the agreement, was to be paid for out of the after earnings of the road. Some days after the lease was executed the note and warrant of attorney before spoken of was given. The sum embraced in that note did not embrace anything but what was actually due to me at the date of that note, and then earned. I had judgment entered on that note in the district court of the United States for this district, which is the same judgment of which evidence has been given in this cause. That note was given to me to secure the payment of the balance then found due to me from the company. In receiving that note and warrant of attorney I had no design, and I knew of no intent on the part of the company, to hinder, delay, or defraud any creditor of the company. My only object was to secure myself. There was nothing said or done, to my knowledge, at the time of that settlement between me and the company, from which I could infer that there was any intest to hinder or delay creditors of the company. The talk was to secure me—nothing else. I pressed the company for other security than the road itself. I did not succeed in getting any other.

592 Question. Was the road, in its then condition, with the large prior incumbrances thereon, completed only to an interior point, nearly completed only to New Lisbon, full security for the money then due you in the said note mentioned?

Answer. It was not. The railroad company insisted that I should complete the road to New Lisbon, and get my pay from the earnings of the road that should come into my possession. I did not want to do any more work on the road; I wanted to stop. They insisted that I should complete the road to New Lisbon or they would not give me the earnings of the road. They thought that the road completed to that point would command business they could not otherwise get. At the time of the execution and delivery of the lease to me my accounts had not been adjusted or settled. At that time the engineer of the company was instructed to go out on the line and make up the estimates. Upon the execution of the lease I demanded an immediate settlement of my accounts. In talking about the basis of a settlement it was agreed that the engineer should go out and make the final estimate, which was done. He went out and made the estimate, and returned it, I believe, on the morning of the first day of October. The board was in session that morning, and all day, and that night until twelve o'clock, before it was arranged. My whole accounts were gone over very carefully, and, I think, Mr. Palmer, thinking they were not right, went ever them a second time with the bookkeeper. He said he supposed I had been

paid a great deal more money than I admitted. He found, on the re-examination, that the accounts were correct, I believe, as previously rendered. I claimed then, and always since, that the amount allowed me was not so much as I ought to have had, on account of some items of the work done by me being underestimated by the engineer.

I enquired at that time of the officers of the railroad company whether they owed Mr. Cleveland anything or not; whether he was likely to get a judgment against them. I had heard at the Walker House of a suit pending against them in his favor. They assured me that they had overpaid Mr. Cleveland, and that there was no doubt but they would get a judgment against him of $18,000 to $25,000. I spoke of this first, enquiring of them. No other claim was spoken of that I recollect. There might have been something said about Vose, Livingston & Co. reclaiming the iron which they had sold the company, having got their pay in full in land grant bonds, and which iron then lay piled upon the company's dock here. I had heard something about the intention to reclaim the iron, and I spoke to the officers of the company about it at that time. I was told by the directors or their counsel—I don't remember which—that the iron had been paid for, and that Vose, Livingston & Co. could not disturb it. They told me that the iron was purchased to be laid upon the road, and the contract so provided, and that it could not be reclaimed if not diverted from that object. I had been pressing for security on the iron, and I asked them about this, and they told me this as a reason why they could not give me security on the iron, that it must be laid on the road. At that time they had given a chattel mortgage on the iron to the land grant bondholders for further security, I
593 believe. The first time I spoke to them about security on the iron they were about giving the mortgage.

I first knew in the fall of 1860 that Mr. Lynde had been spoken to about his services on the appeal in the Cleveland suit. Mr. Lynde was not retained with my knowledge, nor at my instance. I did not then, nor at any time prior to the month of April, 1861, have the legal title to the Cleveland judgment. James B. Cross had it. James B. Cross's notes, endorsed by Clark Shepardson, were given to Cleveland for the judgment, as I understand. I was not to have any interest in or control over the judgment until I should pay Mr. Cross the amount of the purchase money. He was told to hold it as security until I should pay for it, and he was to have the entire control of it. The judgment is assigned to a trustee now as security to Mr. Cleveland for the payment of the balance due to him on it.

Question. Did not Mr. Cross and Mr. Shepardson remain liable to Mr. Cleveland for the purchase money of that judgment, until it was assigned by Cross, and placed in the hands of a trustee with the assent of and as security for said Cleveland? And did not Cross have the sole control of said judgment until the time of such assignment? If yea, state what time it was so assigned for the benefit of said Cleveland.

Answer. Cross & Shepardson remained liable until that assignment, and up to that time. Cross had the sole control of that judgment. That assignment was made about the last of April *of* first of May, 1861.

Question. Has William P. Lynde, or the firm of Finches, Lynde & Miller, at any time since they were retained by you as your counsel, taken any steps in that appeal suit?

Answer. Not to my knowledge.

WEDNESDAY, 19 *June*, 1861.

Selah Chamberlain, being re-examined, says: We continued the work to Lisbon, finishing it to that point, from Portage City. Work was suspended beyond New Lisbon. At the time of the suspension I had on hand horses,

carts, tools, implements, to an amount sufficient for working the road. I should estimate the property on hand at the time of the suspension of work to be worth $135,000. I could not tell in what amount I was then indebted to hands and sub-contractors. It was more than $100,000—a good deal more, but I could not say how much. I had then been working on the La Crosse railroad since April, 1856. I had before that had an interest in a contract on the Milwaukee and Mississippi railroad, from a point near Eagle to Madison, which was settled to stop at Rock River, I think, but am not certain. I was here once during the progress of work under that contract, which was the first I had in this State. That was in 1852 or 1853.

Question. What amount of capital or monied means did you bring to Wisconsin and invest in railroad contracts at the time you engaged in the contract on the Mississippi road?

(Objected to by counsel for defendant, Selah Chamberlain, as irrelevant, and that the order of reference is not intended to embrace the Mil-
594 waukee and Mississippi railroad, or any other railroad, or railroad contracts, than those mentioned in the pleadings in the suit. The objection is overruled, and the question is permitted to be asked.)

Answer. I could not answer that question.

Question. Did you bring $5,000?

Answer. Yes, more than five times that amount. I did not bring any money, but I caused to be brought a very large amount of money for that contract. I could not say how much. We bought and paid for 4,000 tons of iron on that contract.

Question. How much of your private means did you invest in that contract? I do not mean to include that which you borrowed.

(The counsel for Mr. Chamberlain renews the objection last made, and further objects that the question is impertinent. The objection is sustained, and the question is excluded.)

Question. Who was your partner in the first contract on the La Crosse road?

Answer. Stephen H. Alden. He had one half interest in the construction contract from Beaver Dam to Portage City.

Question. What amount of your individual capital or monied means did you employ in that contract, not including property or money obtained on credit?

(Objected to by Mr. Chamberlain's counsel because it is irrelevant; that no part of the claim is based on the contract inquired into, nor is that contract in evidence; and further, that the question draws a distinction between the ready cash means of the witness and such means as were furnished by him on his own sole credit to carry on the contract. The objection is sustained.)

Question. What was the amount of your individual share of net profits arising out of that contract?

(Objected to by Mr. Chamberlain's counsel for irrelevancy, and because impertinent to this issue. Objection sustained and question excluded.)

Question. At about what time was the work under that contract completed?

(Objected to for the same reason by Mr. Chamberlain's counsel. Objection overruled.)

Answer. In the fall, and during the winter of 1856-'7. The grading was all done in the fall, and the track was finished in the following winter.

Question. What amount of your individual capital or monied means did you employ in the contract called the ballasting contract, Exhibit No. 8?

(Objected to by Mr. Chamberlain's counsel for irrelevancy, in this that the question draws a distinction between the individual cash means of the wit-

ness and the means procured and furnished solely by him in carrying on the work. Objection overruled.)

Answer. I could not answer that question; that contract and the contract on the western division of the 20 January, 1857, were going on at the same time, and we kept but one set of books, and I cannot distinguish what amount of means went into each.

Question. What amount of your individual capital or cash means
595 did you employ in both the contracts, to wit, the contracts designated as Exhibit Nos. 8 and 9?

(Mr. Chamberlain's counsel does not object to the subject-matter of the inquiry, but claim that the masters should instruct the witness that he is at liberty to answer as to all means furnished by him and employed on the work, which work, when done by the means so furnished by him, would constitute a claim against the company.)

Answer. I can't answer that question with any definiteness. At the time that I commenced the work from Portage City west I think that my cash capital invested was from $125,000 to $150,000; during the spring and summer of 1857 I put in large amounts at various times.

(The witness is going on further to state, in answer to the last question, that he was obliged, after the settlement with the company in September, 1857, to raise amounts of money in order to pay indebtedness against him for work previously done under those contracts, when he is interrupted by the counsel examining him, who objects that such answer is not responsive to the question, which was intended to embrace only the amount put into the work before the settlement.)

Question. What amount of your individual capital or monied means did you employ or invest in executing the ballasting contract (Exhibit No. 8) and the construction contract (Exhibit No. 9) prior to the settlement of 1 October, 1857, not including money or property obtained on credit?

(Mr. Chamberlain's counsel objects to the question, because the counsel examining has no right to draw a distinction between the cash means of the witness employed in carrying on the work and means furnished by the witness from any other source upon his own credit, nor a distinction as to the indebtedness by him personally incurred for work done. The validity of the defendant Chamberlain's claim must depend upon whether he did the work which the company had the benefit of, and with which the company was chargeable, completed and performed by his means or on his credit, and not the company's. He further objects, that it appears in proof that the work was done under a contract which must govern as to the price or compensation for the work, and while the contract stands free from any suspicion of fraud, the only question is whether the work was performed, and how much.)

June 26, 1861.—(The question last above propounded is withdrawn by the counsel.)

Re-examination of Selah Chamberlain by the counsel for Sebre Howard and others, continued.

Question. Was there not a lease of the entire Watertown division (so called) made by the La Crosse Railroad Company at the same time that the before-mentioned lease to you was made?

Answer. Not to my knowledge; I have seen the lease, and I think it was made after mine was made; I know that the lease to D. C. Freeman was made after the lease to me was made; I have seen the record,
596 and I was here at the time it was made. The Cleveland judgment is now assigned to Alexander Mitchell, as trustee, to hold for my benefit, subject to the payment of the amount due Mr. Cleveland.

Cross-examination of Selah Chamberlain by the counsel for the defendant Chamberlain.

Question. What amount were you liable for on account of the work performed by you prior to October 1st, 1857, and up to that time on the contracts stated?

Answer. I can't give the exact amount; I should estimate it to be somewhere between $125,000 and $150,000 that I was in debt at that time for such work.

Question. Was provision made by the company for any part of this?

Answer. Not at all, otherwise than by the judgment and lease.

Question. When you made these contracts (Exhibits Nos. 8 and 9) what was about your personal pecuniary responsibility and what were your means and opportunities of credit in carrying on works of the character mentioned in the contracts?

Answer. I suppose that my real estate, railroad stocks and bonds, and other securities would be worth, at the prices then put on such property, from $600,000 to $700,000. I had no trouble in getting all the money I wanted at that time for carrying on works of the kind on my own notes, without endorsement; when it was necessary I put up collaterals. I was then entirely out of debt.

Question. In carrying on these contracts did the railroad company, or its directors, or any person connected therewith, advance you any money, property, or other thing not by you earned by the terms of the contracts themselves at the times of such payment?

Answer. No, sir; they did not.

Question. Did they meet their engagements with you under the contract?

Answer. They did not. The extent of their failure appears in detail in the proofs already taken in this cause.

The claim against me in favor of Erwin McCall, testified to by me heretofore, has been ordered by this court to be paid by the receiver, the amount being settled, and I have therefore no claim on account of that suit.

Question. When the contract of 8 December, 1857, for a new estimate of the work done by you prior to 1 October, 1857, was made, did the board of directors of the La Crosse Railroad Company consist of the same persons as when the settlement was made with you on the 1 October, 1857, and who on the 8 December was president of the company? And what reason led to such remeasurement and re-estimate?

Answer. There had been a change in the board of directors between the two dates, a majority at the last date being new men from the east. Stephen Clark was president of the new board. The reasons which led to the remeasurement are the same set forth in the contract for the remeasurement.

That original contract I now hold in my hands.

597 (A copy thereof is on file in this cause, marked Exhibit C, and the estimate made in pursuance of said contract, marked D, is also on file in this cause.)

The only object in making the remeasurement was to ascertain the actual amount of work done and the amount due to me. I wanted what was due to me, and nothing more.

S. CHAMBERLAIN.

FRIDAY, 28 *June*, 1861.

Mr. Hubbell appears also for John S. Rockwell, defendant, and on behalf of said Rockwell, as well as on behalf of the other defendants for whom Mr. Hubbell appears, the following depositions are taken:

Deposition of John Nazro.

Mr. Hubbell, on behalf of all of said defendants above named, offers as a witness John Nazro, and Mr. Van Dyke, of counsel for Mr. Selah Chamberlain, defendant, objects to the examination of said witness, and to all evidence offered on this reference on behalf of said Rockwell, which objection is overruled by the masters, and the witness, John Nazro, is duly sworn, and says:

I reside in Milwaukee.

Question. Have you in your possession any bonds secured by the third mortgage executed by the La Crosse and Milwaukee Railroad Company, dated 21 June, 1858?

(Objected to by Mr. Van Dyke, counsel for Selah Chamberlain, because the question is irrelevant and immaterial to the issue, and the subject-matter thereof is not embraced in the order of reference made in these causes or either of them, which objection is sustained and the question is overruled.)

Question. Are you the owner of any such bonds, and if yea, from whom did you procure or purchase the same, and for what consideration were the same purchased or procured by you?

(Objected to for the same reasons, and the question is excluded.)

JOHN NAZRO.

FRIDAY, 5 *July*, 1861.

Mr. Carpenter and Mr. Van Dyke, counsel as aforesaid, appear.

Deposition of B. H. Edgarton.

Benjamin H. Edgarton, being called as a witness and duly sworn, says:

I reside in Milwaukee. I am by profession a civil engineer, and have followed that for some 22 or 23 years. I have been employed on the Milwaukee and Mississippi, now the M. and Prairie du Chien railroad, since 1849. I am familiar with the methods and processes of measuring work done on railroads. I have been over a portion of the La Crosse and Milwaukee railroad; that portion between Milwaukee and the tunnel.

598 Question. Can the work done on that railroad be measured and computed at the present time, so as to approximate to the actual amount of work done on building the road.

(Objected to as being irrelevant, and for the further reason that the subject of remeasurement is not before the masters. Objection overruled.)

Answer. I think the road could be measured so as to show approximately the whole amount of work which has been done upon the road up to this time.

This is true, whether the measurement should be in an embankment or in a cut.

I am acquainted, and was at the time, with the value of work such as was done on the La Crosse railroad, while that road was being constructed. I was engaged as an engineer in the construction of the Mil. and Miss. railroad, and was familiar with the prices of that class of work, except tunnelling, on which I had had no experience. I have never seen the tunnel since it was completed. I presume the excavation could be as well measured now as when it was done. It might be sheathed so that the work could not be seen accurately.

Question. What was the difference in value of excavating between solid rock and loose rock at the time the work was done on the La Crosse railroad?

(Objected to because the work in this case was done under a contract, and the evidence sought is immaterial. Objection sustained.)

Question. At the time the La Crosse railroad was constructed what was it fairly and reasonably worth to excavate solid rock, and what was it fairly and reasonably worth to excavate loose rock, taking into account the general nature and character of the work done on that railroad?

(Objected to for the same reason as before. Mr. Carpenter offers further to prove what would be a fair and reasonable price for doing the whole work, and that such price is greatly less than that fixed in this contract. Mr. Van Dyke further objects that at the time of the making of the contract there were no creditors of the company, and it was not indebted. Objection overruled.)

Answer. The classification of solid and loose rock varies very much. The practice of engineers in classifying such work varies very much. I can only speak from my own experience. About that time I had charge of some such work in Iowa, and we paid therefor, what we called solid rock excavation, 75 to 80 cents, and for loose rock, 35 to 40 cents per cubic yard.

Question. In your opinion as an engineer, how near could you, by an accurate and careful measurement, calculation, and estimate of the work appearing to have been done in the construction ot this road, arrive at the true amount of work so done?

(Objected to by Mr. Van Dyke as irrelevant. Objection overruled.)

Answer. I should think it might be measured within ten or fifteen per cent. An embankment would be smaller now than it was when the work was done. An excavation would remain about the same, being perhaps a little larger.

599 Question. Do you mean that, adding from ten to fifteen per cent. to the amount which would be shown by a present measurement, you would, in your opinion, arrive at the rue amount of work done?

Answer. I mean that I could arrive at a result which I should be satisfied in my own mind would be within ten or fifteen per cent. of the true amount. I would make what I should consider a sufficient allowance for shrinkage, &c.

Question. Suppose you were called upon as an engineer to arrive as near as possible at the amount of earth in a given embankment shown to you; that you should first make accurate measurements and calculations of the embankment in its present form, and then should add ten or fifteen per cent. for shrinkage; would that, in your opinion, give about the true amount of earth originally deposited?

Answer. I think an embankment, by adding a proper percentage, could be measured to show very nearly the true amount. After making the allowance, there would still be an uncertainty of perhaps ten or fifteen per cent. as to the amount actually put into it.

Question. In your opinion as an engineer, shown you a given embankment, can you, by an accurate examination of the surface upon which it is deposited, the character of the materials deposited, and all the natural circumstances surrounding the embankment, estimate and judge with a reasonable degree of certainty what percentage ought to be added for the shrinkage during any given number of years?

(Objected to by Mr. Van Dyke for uncertainty, immateriality, and because it calls for testimony secondary in its nature. Objection sustained.)

(Examination of Mr. Edgarton suspended.)

S. Chamberlain recalled.

SATURDAY, 6 *July*, 1861.

Selah Chamberlain, recalled by Mr. Carpenter, testifies and says:

The ballasting contract was the first contract which I had with the La Crosse Railroad Company, which is connected with my judgment against it. This item in my account, 45¼ miles ballasting, *a* $2,000 a mile, $90,500, was not under this contract, but was for ballasting on the western division, under the contract of 20 January, 1857.

The material for ballasting done as above, to the amount of $90,500, was mostly obtained at various points along the line of the western division, some of it in Portage City, perhaps 10,000, 15,000, or 20,000 yards, I can't say how much; the engineer's estimates will show, and I could not pretend to say how much.

Cross-examined by Mr. Van Dyke.

It was ascertained that the ballasting on the eastern division, between Beaver Dam and Portage City, at forty cents per yard, (the contract price,) amounted to $2,200 or $2,300 per mile, and I claimed that I ought to be allowed at that rate on the western division, but the engineer estimated only $2,000 per mile, and the company would only allow that, and I finally settled with them at that rate.

S. CHAMBERLAIN.

600 *B. H. Edgerton recalled.*

Benjamin H. Edgerton, recalled, says:

Cross-examined by Mr. Van Dyke.

Where a road is built under a contract, at the rate of so much a mile, the only measurement necessary to ascertain the amount done is the length of the road.

I mean by my testimony that I could now make a measurement of the work done on the La Crosse railroad, or on any part of it, from which I could determine within ten or fifteen per cent. the amount of work done up to the time of measurement.

Question. Suppose you now had made that measurement of the whole La Crosse road, and should ascertain to your own satisfaction, by making allowances, as you state, the amount of work that had been performed on the road up to the time of measurement, how would that fact, when ascertained, enable you to determine how much of the work was done up to a given period, it appearing that the work done up to that period was done in uncompleted portions along the whole line?

(Objected to by Mr. Carpenter as incomprehensible. Objection overruled.)

Answer. I don't know that I could by measurement of the work now determine how much had been done up to any particular time. I could only determine how much had been done up to the time of measurement.

Question. Could any measurement now made of the road determine with anything like the accuracy that the engineer in charge of the work on the line, with his cross sections and field and working notes, could measure the work with the general knowledge of the material and work which he would have from his general superintendence?

Answer. I should think it would be impossible to measure it so accurately without as with the field-notes. Any measurement now would be an approximate measurement.

Question. You have stated that you could make an approximate estimate within ten or fifteen per cent. of the work. Now, after you had made a survey and classification of the rock without the original survey or working notes, would you be willing to swear that you could come within thirty per cent. of the amount of that portion of the work?

Answer. The amount of rock work would be the most difficult to ascertain of any part of the work. Further, in a through cut I could ascertain the amount of the work within thirty per cent., but on a side cut I could not ascertain with much accuracy.

I could ascertain very nearly the quantity of material in the foundations, but I could not tell about the expense of getting it into its place.

By the masters.

I think competent engineers going over this work, and measuring and estimating it, would come within ten or fifteen per cent. of the same amount.

601 Some foundations or walls might be so covered up as to make it difficult to get at the amount, but it would not be impossible. The size and quantity of the material could be measured with tolerable accuracy, but the expense of putting it in could not be determined with any accuracy. It would vary with many circumstances.

It would now be very difficult to ascertain the amount of extra haul (earth carried over 500 feet) done by Chamberlain, because the company has probably done a great deal of work, but it would not be difficult to ascertain by observation and measurement all the extra haul which had been done up to the time of measurement.

I think the amount of bank wall which has been constructed could be measured. I don't mean that the bank wall which has slipped into the river could be measured, but only that in position. I think that the road is washed by the river for only a little ways.

Re-examined.

The portions of the road which would be difficult of measurement are only a small proportion of the whole work on the road.

Question. If the estimate made by the engineer in charge of the work between Portage City and La Crosse is, for some unaccountable reason, five or six hundred thousand dollars too large, would a remeasurement of the work be likely to detect such an error?

(Objected to, because the supposition is not based upon any testimony in the case, nor has any proof been given of any inaccuracy or over-estimate in the original estimate of the engineer, Woodward, or in that shortly thereafter made by Woodward & Sill, both in evidence in this case, with their testimony as to the manner and amount of their estimate. Objection overruled.)

Answer. A remeasurement of the work, when the prices are fixed and known, would be likely to detect the error.

Cross-examined.

Question. Do you know of any errors or inaccuracies in the estimates of Woodward, the chief engineer of that road, or *the* in the subsequent estimate by Woodward & Sill, of the work performed by Chamberlain on the road?

(Objected to, as immaterial and incompetent. Objection overruled.)

Answer. I can only say that at the time we made the measurement, in 1857, we were shown an estimate purporting to have been made by Mr.

Woodward wherein the quantities of some items were materially different from the quantities which we ascertained.

(Mr. Chamberlain's counsel objects to the foregoing answer, for the reason that it is not responsive, which objection was made also before the answer was fully made.)

Question. Do you know of any errors or inaccuracies in those estimates, and have you ever seen the final estimate made by Woodward, or the estimate of Woodward & Sill?

Answer. I have never seen any estimate made by Woodward & Sill.

602 I saw what purported to be the final estimate of Mr. Woodward. We so understood it at the time.

Question. Do you know whether the paper shown you, purporting to be a copy the final estimate made by Woodward, was in fact a copy of that estimate?

Answer. I do not know.

B. H. EDGERTON.

(Mr. Carpenter offers to read the depositions of engineers in the Exhibit No. 24, and Mr. Van Dyke, of counsel for the defendant Chamberlain, requests that such depositions be not read in the hearing of engineers in attendance upon this examination, whom Mr. Carpenter proposes to call upon the same points testified to in the said depositions. The depositions are allowed to be read.)

E. H. Goodrich recalled.

MONDAY, 8 *July*, 1861.

Edwin H. Goodrich, being recalled as a witness by Mr. Carpenter, counsel as aforesaid, testifies and says: I am manager of the La Crosse railroad, under Mr. H. Crocker, receiver. I do not know where the field-note books and profiles of the road are. They may be at the office of the company in this city. There are some books and papers there, some parts of a profile. I don't know whether the entire profile. These are not in my charge. They are, I suppose, in the receiver's possession. I have in my possession a profile made by one of the engineers in the employ of the company, a year or a year and a half after the completion of the road, for my use in running the trains, to show the grades. I don't think it is accurate. I think the field-notes are in one of the rooms of the depot building in this city. I have no copies of them.

(Objected to by Mr. Van Dyke, as irrelevant.)

EDWIN H. GOODRICH.

Stipulation as to testimony.

In district court of the United States for the district of Wisconsin.

GREEN C. BRONSON AND JAMES T. SOUTTER AND SHEPERD KNAPP, compl'ts,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY AND OTHERS, def'ts.
} In equity.

It is stipulated and agreed by the subscribing parties to the above-entitled cause that before the masters appointed in this cause either or any person or party entitled to examine witnesses before said masters may read in evidence any part of or all of the testimony or depositions taken in a cause in said court, in equity, in which Newcomb Cleveland was complainant and

said La Crosse and Milwaukee Railroad Company and others were defendants, in which cause the bill of complaint was filed on or about the 31 day October, A. D. 1857.

All of said testimony to be subject to all and every objection as to
603 its materiality which could be urged or made if the witnesses were called and again orally examined before said masters.

Nothing herein contained is, however, to be so construed as to admit the record of said Cleveland suit, or the decree therein as evidence before said masters, or in this cause, but this agreement is made with a view solely of dispensing with the necessity of calling witnesses to testify. Either party, however, may call any one or more of said witnesses for the purposes of explanation or otherwise.

It is further understood that neither party waives any objection already made, or any which he might or could urge to this reference, or any question which may arise on the report of the masters. Either party desiring to introduce any one, or part or parts of any one or more of said depositions or testimony used in said Cleveland cause shall furnish copy or copies thereof to the masters from time to time, as the testimony may be in progress.

The object of this stipulation being to consent to said testimony, and waive all objections to the same being used, without retaking the same in this cause, and before said masters, nothing else being waived by either party in relation to the same, and each party having a right to object to the materiality of the same when offered. This is done for convenience and to save expense.

Dated April 9th, 1861.

EMMONS, VAN DYKE & HAMILTON,
Solicitors for Chamberlain.
MAT. H. CARPENTER,
CARPENTER & GRIDLEY,
Sol. for Graham & Scott, counsel for Sebre Howard,
Solicitors for Mil. and Minn. R. R. Co.

Certificate of master.

District of Wisconsin, *ss:*

We, the masters hereinbefore named, return the foregoing depositions and minutes of examinations, and the exhibits therein referred to, numbered from 1 to 39, inclusive. The counsel who have attended the examinations, the dates of taking the same, the objections made by counsel, and our decisions thereon, the interrogatories propounded to the witnesses, (when desired,) and the references to written evidence introduced, are all hereinbefore stated. The witnesses named were each sworn by us, before being examined; to testify the truth, the whole truth, and nothing but the truth, upon such examination, and his answers so taken on oath were carefully reduced to writing by one of us in his presence, and then read over to and subscribed by him.

Dated this seventh day of October, A. D. 1861.

WINFIELD SMITH, *Master.*

604 EXHIBIT No. 1.

Statement of earnings and expenses of La Crosse and Milwaukee railroad from October 1, 1857, to November 30, 1859, as operated by S. Chamberlain.

	Freight.	Passengers.	Miscellaneous.	Total.	Expenses.	Nett earnings.
1857.						
October	$24,050 83	$21,413 45	$887 90	$46,352 18	$15,781 89	$30,570 29
November	24,337 24	13,522 61	616 70	38,476 55	13,778 30	24,698 25
December	10,730 27	17,497 77	648 88	28,876 92	13,723 61	15,153 31
1858.						
January	12,758 24	10,702 07	775 86	24,236 17	11,730 25	12,505 92
February	10,651 00	8,946 46	437 92	20,035 38	9,864 20	10,171 18
March	13,040 48	12,679 38	544 70	26,264 56	13,341 68	12,922 88
April	17,852 25	13,785 21	2,053 03	33,690 49	14,538 47	19,152 02
May	23,803 76	17,942 93	632 74	42,379 43	16,511 44	25,867 99
June	28,153 79	15,043 54	678 21	43,875 54	20,485 81	23,389 73
July	28,267 40	17,316 34	2,025 27	47,609 01	22,437 58	25,171 43
August	20,029 05	16,885 08	767 99	37,682 12	24,051 71	13,630 41
September	37,248 03	23,714 34	2,339 18	63,301 55	26,181 24	37,120 31
October	32,255 48	28,377 87	941 17	61,554 52	32,623 36	28,931 16
November	26,944 10	27,003 05	1,054 83	55,001 98	32,257 55	22,744 43
December	18,937 58	13,368 92	4,516 55	36,823 05	24,305 83	12,517 22
1859.						
January	19,304 68	14,972 06	916 69	35,193 45	28,777 74	6,415 71
February	16,835 22	17,869 51	898 52	35,603 25	33,152 63	2,450 62
March	15,947 73	18,433 13	1,999 78	36,380 64	34,818 76	1,561 88
April	18,916 17	18,786 05	1,086 16	38,788 38	38,213 17	575 21
May	23,865 83	21,973 28	1,011 20	46,850 31	32,824 78	14,025 53
June	17,556 63	26,770 49	5,672 55	49,999 67	31,824 08	18,175 59
July	15,833 68	16,343 56	1,039 22	33,216 46	32,554 36	662 10
August	17,488 38	21,119 66	5,995 58	44,603 60	25,294 62	19,308 98
September	64,660 53	29,223 89	5,507 39	99,391 81	33,127 33	66,264 48
October	90,233 80	19,919 69	1,086 97	111,240 46	39,260 09	71,980 37
November	62,133 28	21,263 41	6,131 34	89,528 03	49,480 18	40,047 85

EXHIBIT No. 2.

$5,000. OFFICE OF THE LA CROSSE & MILWAUKEE RAILROAD CO.,
Milwaukee, Sept. 4, 1857.

On the first day of October, without acceptance, pay to the order of S. Chamberlain five thousand dollars, value received, and charge to account of
LA CROSSE AND MILWAUKEE R. R. Co.,
By EDWIN H. GOODRICH, *Vice-Pres't.*

605 EXHIBIT No. 3.

La Crosse and Milwaukee R. R. Co. to S. Chamberlain & Co., Dr., 1857.

Sept.—For expenses in getting engine and iron over river:

Paid McDonald & Co., for lumber for scow	27 21
Paid Fenehout for soup pail, axe, &c	4 55
14 days, team hauling wood over river	49 00
1 day picking up and throwing wood	1 25

Sept.—Laborers, per pay-roll in August	665 57
Add 25 per cent	166 39
Laborers, per pay-roll in Sept	1, 764 37
Add 25 per cent	441 09
	3, 119 43

I have examined the above bill and find it correct.
(Signed) E. W. WOODWARD, *Chief Engineer.*

Dec. 31, 1857.

EXHIBIT No. 4.

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, on the second part, witnesseth, that the said parties have mutually undertaken and agreed, and by these presents do undertake and agree to and with each other, that the contract heretofore entered into between the said parties for the construction of the western division of the La Crosse and Milwaukee railroad, from Portage Cty to La Crosse, excepting the bridge across the Wisconsin River at Kilbourn City, and which contract bears date the 20th day of January, A. D. 1857, and the supplemental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be, and the same are hereby, modified as follows, viz:

The said party of the second part shall proceed to complete the construction of said railroad as far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch and by the first day of December next.

The time for completing the said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the said railroad between the two points last named as fast as, and no faster, than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same in cash or monthly estimates, according to the terms and stipulations of the aforesaid contracts.

The contract entered into by and between said parties on the 20th day of November, A. D. 1856, for the ballasting of that portion of the La
606 Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said works, but that the motive power and cars so used shall be a part of that specified in the contract between the said parties entered into simultaneously with the contract for the leasing of the said road, and that the said party of the second part shall, for all ballasting which he shall do after the 30th day of September, A. D. 1857, specified in said contract, and for all other ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of constructing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension, and by loss on teams, materials, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second

part is to be paid the amount now due him, and the amount to become due to him for finishing said road to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further consideration of the services, risks, and personal expenses of the said party of the second part in the operation and management of said railroad, as hereinafter referred to, and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay to said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid considerations.

It is further stipulated and agreed that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amount due to the said party of the second part on the 30th day of September, A. D. 1857, under and by virtue of the said contracts of January 20, 1857, April 30, 1857, and November 20, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars, shall be the bal. due to the said party of the second part on the 1st day of October, 1857, and shall be charged by the said party of the second part to the said party of the first part, and on the first day of every month thereafter the said party of the second part shall charge the said party of the first part with the amount which shall be due under and by virtue of either of said contracts, or of this contract, in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of the said railroad by virtue of the said contract of lease entered into between said parties simultaneously with these presents.

It is further agreed between the said parties that on the 1st day of July, 1858, and on the first day of each July and each January thereafter,
607 a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making up such account at the rate of twelve per centum per annum.

It is further agreed between the said parties that whatever sum shall hereafter become due to said party of the second part, for any work done in the construction of said railroad between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company derived from other sources than the income of said railroad.

In witness whereof, the said party of the first part has caused these presents to be signed by its president and secretary, and the corporate seal of said company to be affixed thereto, and the said party of the second part has affixed his signature and seal the day and year first above written.

La Crosse and Milwaukee Railroad Company, by—

BYRON KILBOURN, *President.*

(Signed) JACKSON HADLEY, *Secretary.*

S. CHAMBERLAIN. [SEAL.]

EXHIBIT No. 5.

Copy.

Estimate of gravelling done on the eastern division of the La C. & M. R. R. bet. Sept. 1, 1858, and Jan'y 1, 1859:

From gravel pit on section 28	5,307	c. y'ds.
" " " " 14	14,306	"
	19,613	"

I certify that the above estimate is correct.

J. M. L. STOUGHTON, *Eng'r.*

Milwaukee, February 4, 1859.

EXHIBIT No. 6.

Copy.

La Crosse and Milwaukee railroad to S. Chamberlain, Dr., 1857.

Nov.	For this amount paid L. B. Boomer for stone, cutting same, and cement for canal bridge, Portage City, viz:	
	225, 78 perch stone, at $2 50	563 16
	72 days' work cutting stone	216 00
	Blacksmith	15 00
	Cutting 33, 24 perch stone	124 65
	57 bbls. cement	171 00
		$1,089 81

The above is correct.

J. M. L. STOUGHTON, *Chief Engineer.*

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EXHIBIT No. 7.

$1,500.—No. 509. MILWAUKEE, *June* 7, 1858.

Twelve months after date, for value received, the La Crosse and Milwaukee Railroad Company promise to pay Jacob A. Hoover, or order, at the Marine Bank in the city of Milwaukee, fifteen hundred dollars, with interest at ten per cent. per annum, till paid.

La Crosse and Milwaukee Railroad Company, by—

(Signed) N. P. STANTON, *President.*

$1,500.—No. 508. MILWAUKEE, *June* 7, 1858.

Six months after date, for value received, the La Crosse and Milwaukee Railroad Company promise to pay Jacob A. Hoover, or order, at the Marine Bank in the city of Milwaukee, fifteen hundred dollars, with interest at ten per cent. per annum, till paid.

La Crosse and Milwaukee Railroad Company, by—

(Signed) N. P. STANTON, *President.*

Land contract.

Jacob A. Hoover with the La Crosse and Milwaukee Railroad Company.

This article of agreement, made and concluded this 7th day of June, 1858, by and between Jacob A. Hoover, party of the first part, and the La Crosse and Milwaukee Railroad Company, party of the second part, witnesseth: First, that the said party of the second part hereby agree and bind themselves, and their successors, legal representatives, to pay or cause to be paid to the said party of the first part, his heirs or assigns, the sum of four thousand dollars, in manner following: One thousand dollars at the ensealing and delivery; fifteen hundred dollars in six months from the date hereof, with interest at ten per cent. per annum; and fifteen hundred dollars in twelve months from the date hereof, with interest at ten per cent. per annum, according to the conditions of two certain promissory notes, bearing even date herewith, executed by the said party of the second part, in favor of the said party of the first part, the said payments to be made to the party of the first part in person, at the Marine Bank in the city of Milwaukee,

and the same being intended to apply, when fully completed, as the purchase money of the following tract or parcel of land, situated in the sixth ward of the city of Milwaukee, on the river, in the county of Milwaukee and State of Wisconsin, known and described as lot numbered four, (4,) in block numbered thirty, (30.)

The said parties of the second part further agree and covenant that they will pay all taxes, special or general, which have been assessed on the above-described premises since the day of the date hereof, and also all such as may hereafter be assessed thereon, whenever such taxes shall become due and payable by law, until the aforesaid purchase money shall be fully paid, in the manner above stated, and also to hold said premises from the date hereof, as the tenant at sufferance, of the said party of the first part, subject to be removed as a tenant holding over, by process under the statute in such case made and provided, whenever default shall be made in the payment of any of the instalments of the purchase money above specified, and also to keep the buildings, fences, and improvements on said premises in as good repair and condition as they now are, except ordinary wear and decay and damage by the elements.

609

Second, the said party of the first part hereby agrees and binds himself, his heirs, executors, and administratrators, that in case the aforesaid sum of three thousand dollars, with the interest, shall be fully paid at the times and in the manner above specified, he will, on demand thereafter, cause to be executed and delivered to the said party of the second part, or their legal representatives, a good and sufficient deed in fee simple in the law of the premises above described, free and clear of all legal liens and incumbrances, except the taxes herein agreed to be paid to the party of the second part; and the said party of the second part, or *his* legal representatives, the sum of five thousand dollars as penalty, in case of failure on his part to execute the deed above mentioned, whenever the said party of the second part shall have punctually and fully complied with this agreement on his part. But it is distinctly agreed and understood by and between the parties hereto that if the said party of the second part shall fail to make any of the payments of the purchase money above specified at the time and in the manner above described, in such case this agreement shall be thenceforth utterly void, and all payments thereon forfeited, subject only to be revived and renewed by the act of the party of the first part, or the mutual agreement of both parties.

In testimony whereof, the parties have hereunto set their hands and seals the day and year first above written.

J. A. HOOVER. [SEAL.]

La Crosse and Milwaukee Railroad Company, by—
[SEAL.] N. R. STANTON, *President.*

In presence of—

STATE OF WISCONSIN, *Milwaukee County, ss:*

On this twenty-first day of December, A. D. 1858, personally came before me J. A. Hoover, of the city and county of Milwaukee, Wisconsin, the grantor in the within contract, to me known, and acknowledged that he executed the same freely and voluntarily.

C. A. WALWORTH,
Notary Public, Mil. Co.

Recorded December 22d, 1858, at 9 o'clock a. m.

610 EXHIBIT No. 8.—*Ballasting contract.*

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Selah Chamberlain, and others. } In equity.

Schedule C.

Memorandum of an agreement made and entered into this twentieth day of November, 1856, by and between the La Crosse and Milwaukee Railroad Company, of the first part, and Selah Chamberlain of the second part, witnesseth, that for and in consideration of the stipulations and payments hereinafter mentioned, the said party of the second part hath, and doth hereby agree to ballast that portion of the La Crosse and Milwaukee railroad extending from the city of Beaver Dam to the city of Portage. The work to be done in a good and workmanlike manner for the sum of forty cents per cubic yard; the material to be measured in the bank at the gravel pits; the railroad company furnishing motive power and gravel cars sufficient to do the work to good advantage, (not exceeding one locomotive engine and forty dumper cars, or, in their stead, twenty-four platform cars, unless a greater number of locomotive engines and dumper or platform cars shall be mutually agreed upon,) free of all cost to the said second party. The track shall be raised at least eighteen inches above subgrade, and as much more as shall be required; to be completed in all respects under the direction and subject to the approval of the engineer of this company in charge of the work. The said railroad company are to furnish all grounds required for gravel pits, and trucks necessary for the same; the said work to be prosecuted in such a manner as not to hinder or delay the passage of any of the regular trains of the company; but it is agreed and understood that the said railroad company are to keep the track in good running order during the execution of this contract, and pay the actual cost of any detentions that may be caused by the railroad company's trains being behind time; but that no claim shall be made by the party of the second part for detentions, unless the company's trains are more than thirty minutes behind time-table time.

It is also agreed that when freight trains are twenty minutes behind time the gravel train shall be allowed to run out in the same direction as the expected train is running, and dump, always stationing a man with a red flag at least one fourth of a mile from the gravel pit run from, to warn approaching trains. It is also agreed that the party of the second part will, upon request of the superintendent of the road, transport to and dump gravel upon any portion of the line of the same embraced in this contract, when gravel is required to repair portions of the said road before the same is ballasted, and that the work herein contracted to be done shall be completed on the thirty-first day of July, A. D. 1857. It is also agreed that the party of the second part may furnish thirty dumper cars at his own cost
611 and charges, to be used on the work herein contracted to be done, and that the party of the first part will, upon completion of the said work, purchase the said dumper cars and pay to the said party of the second part the actual costs and charges incurred in the purchase and transportation of the said dumper cars from the point where the same were purchased to the city of Milwaukee, said payments to be made on the 1st day of August, 1857. It is also agreed that for all work done under this contract, monthly estimates shall be made by the engineer of the said party of the first part on the first day of each month for all work done during the preceding month; and for all work so done prior to the first of May, 1857, pay-

ments shall be made in the company's notes *notes* due and payable in the city of New York six months from the time of rendering of said estimates, with interest at the rate of seven per cent. per annum; and for all work done under this contract subsequently to the first day of May, 1857, payments shall be made in cash on monthly estimates to be made as hereinbefore provided.

In testimony whereof, the said parties have signed this memorandum in the manner following, to wit: The La Crosse and Milwaukee Railroad Company, by Moses Kneeland, vice-president thereof, (the president being absent,) and the party of the second part for himself.

La Crosse and Milwaukee R. R. Co., by—

(Signed) MOSES KNEELAND, *Vice-President.*

(Signed) S. CHAMBERLAIN.

Schedule A.

ENGINEER'S OFFICE LA CROSSE AND MILW. R. R.,
Milwaukee, Oct. 1st, 1857.

Estimate of work done by Selah Chamberlain, contractor, on the eastern division of the La Crosse and Milwaukee railroad, under this contract, for ballasting that portion between Beaver Dam and Portage City, from commencement to date:

Ballasting 192,542 y'ds, at 40	$77, 016 80
To this is to be added for filling in the bank at Fox Lake	20, 768 65
	97, 785 45

I hereby certify that the above estimate is correct.

E. W. WOODWARD, *Chief Engineer.*

EXHIBIT No. 9.—*Contract.*

Schedule E.

This agreement, made and entered into this twentieth day of January, 1857, between the La Crosse and Milwaukee Railroad Company, of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part, witnesseth: That the said party of the second part, for and in consideration of the several covenants, stipulations, and payments on the part of
612 the said party of the first part, hereinafter mentioned and set forth, to be made and performed by the said party of the first part, hereby constructs and agrees to contract for said party of the first part a single tract sub-grade railroad, except when ballast can be found on the section known as the "western division" of the La Crosse and Milwaukee railroad, extending from Portage City to La Crosse, (except the bridge at Kilbourne City,) it being supposed to be about one hundred and ten miles of main line, all the side tracks to be paid for in addition to the main line, and at the same price per mile.

The work included in this contract is the grading, bridging, culverts, ties, chairs, spike, and laying the track, which shall be laid by centre stakes and without grades. The work to be done in a substantial and workmanlike manner, for the sum of twelve thousand dollars per mile of main line, and the same sum per mile of side track.

GRADING.—The road-bed shall be graded fourteen feet wide on embankments at sub-grade, and eighteen feet wide in excavations; the excavations and embankments are to have such slopes as the engineer may direct, but

not to exceed one foot and a half horizontal to one foot vertical, and no waste earth shall be deposited within three feet of the top of the slopes of excavations, nor any borrowing ditches be dug within five feet of the base of embankments.

The said railroad company are to furnish grounds convenient to waste earth when from excavations, and to borrow earth from for embankments for the road-bed.

MASONRY.—All abutments for bridges and culverts shall be constructed of timber, unless suitable stone can be obtained within two miles of the point where structures are to be put in. Should stone be found within the above limits, the bridges, abutments, and piers, if any, shall be of rough masonry, with good beds and joints. No backing shall be used of less thickness than four inches, unless required for levelling up. Common lime mortar shall be used in all bridge masonry. Culverts shall be constructed of rough stone, and without mortar.

CROSS-TIES.—The cross-ties are to be hewed or sawed, and to be of red, white, bur, and black oak, cedar, spruce, tamarack, gray or Norway pine, black walnut, or ash, and are to be six inches thick, eight feet long, and are to have a bearing surface of not less than seven inches. Ties shall be laid in track two feet and three inches from centre to centre, and twenty-three hundred and forty-four ties shall be laid in each mile of track.

TRACK-LAYING.—The track shall be laid in the usual way of laying sub-grade track, with a "T" rail and common wrought-iron chair, the spike to be five inches long and half an inch square. The said party of the first part agree to furnish the said party of the second part with locomotive power and a sufficient number of platform or suitable cars for the transportation of iron chairs, spike, ties, timber, and other materials on said western division required during the execution of this contract, free of all cost and charges to said second party; and the said party of the first part also agrees that the contractor shall be passed free over the road during its construction,

and any of his agents, necessary for their business, shall be fur-
613 nished with a pass from the president or superintendent, and laborers with their families and baggage once out to the work, on passes furnished by the contractors or his agent, on any freight or construction train.

EXTRA WORK.—It is hereby mutually agreed and stipulated between the parties to this agreement, that all grubbing and clearing, all excavations of rock, quick-sand, indurated clay, or cemented gravel, all foundations for masonry, all piling and hauling of excavations or embankments over five hundred feet, shall be considered extra work, and shall be paid for at *at* the following rates, to wit, grubbing and clearing, three hundred dollars per mile the entire length of main line ; loose rock excavations, seventy-five cents per cubic yard; dry solid rock, one dollar per cubic yard; rock excavations in dividing ridge, one dollar and twenty-five cents per cubic yard ; quick-sand excavations, one dollar per cubic yard ; hard-pan, indurated clay, or cemented gravel, seventy-five cents per cubic yard ; for all hauling of excavation or embankments over five hundred feet, one cent extra per cubic yard for each one hundred feet : provided, that if the aggregate of earth work shall fall short of the maximum of 20,000 cubic yards per mile, then 25 cents per yard is to be deducted from thea bove-mentioned price for rock, hard-pan, indurated clay, or gravel.

SUBDIVISIONS AND LIMITS OF QUANTITIES.—It is further agreed and understood that the work embraced in this contract is to be divided into three subdivisions of nearly equal distances, and should the quantities of excava-

tions and embankments on any one or more of the subdivisions exceed twenty thousand yards per mile, such excess shall be paid for as extra work, at the rate of forty cents per cubic yard; and it is agreed that the quantities shall be as much below the above limits as practicable, consistent with a proper regard for the location of the work; and due care shall be taken in the location of the line to produce the most favorable results in this respect. It is also agreed that all excavations from the cuts shall be hauled into embankments when it can be done within a reasonable haul, and shall be computed as excavation or embankment only.

The railroad company agree to furnish the iron rails of the "T" pattern, notched, ready for laying, and deliver at Portage City a sufficient amount to lay the track to Kilbourn City, and at the latter point the balance, sufficient to lay the track to La Crosse, and pile the same in a convenient place to load on to the cars, and keep a full supply always on hand, and forward to same point all chairs and spikes required to be used in laying said iron in track free of charge for transportation, and furnish motive power and cars to transport to Portage City all ties or materials for construction now owned by the said party of the second part, and on the line of the eastern division of the road of the party of the first part. It is also agreed by and between the parties that the said party of the first part agrees to do all engineering, and to have the work ready at all times for said party of the second part, so as not to hinder or delay the work, and to have the work divided off into sections of one mile each, being each regular surveyed mile on the line. The said first party also agrees to furnish all rights of way, and obtain
614 grounds for wasting material or from excavations, and borrowing from the embankment so as not to delay or hinder the progress of the work; and it is further mutually agreed between the parties to this contract that if, in the course of the prosecution of this contract, or after the completion of the work to be done, any matter of difference or disagreement shall at any time arise, either as to the construction of this agreement or as to the manner of doing the work herein contracted to be done, all such matters of difference shall be at once submitted to three disinterested persons to act in the premises, and should the parties not be able to agree on the third person, the two first selected shall select a third. The three so chosen shall hear the parties and decide the matter submitted to them, and the decision of a majority of them shall be final and conclusive, and their decision as aforesaid shall be irrevocable. It is further agreed that any extra work required to be done for which no price is specified shall be paid for at a fair price. The work shall be commenced by the first day of February next, and be completed to Kilbourn City on the first day of October next, and to La Crosse by the thirty-first day of October, eighteen hundred and fifty-eight. The said party of the first part agree that the bridge at Kilbourn City shall be completed and ready for the track by the first day of October next.

ESTIMATES AND PAYMENTS.—Estimates shall be made on the first day of each month by the engineer in charge of said work of the amount of work done and materials furnished by said party of the second part during the preceding month, and of the proportion which such work and materials bear to the whole work and materials embraced in this contract, and also separate estimates of the amount of work done and materials furnished by each sub-contractor, and copies of all such estimates shall be furnished to said party of the second part; and the said party of the first part covenants and agrees to pay to said party of the second part, on the fifth day of each month, ninety per cent. of the amount of such estimates so to be made on the first day of each month; such payment shall be ninety per cent. of such proportionate sum of the whole amount to be paid under this contract as such work and materials so estimated bear to the whole work and materials embraced in this

contract. All estimates shall be paid by sight drafts, payable in New York The retained percentage shall be paid on the completion of each division of 34 miles.

It is also mutually agreed or understood by and between the parties hereto that at any time during the progress of said work the said party of the first part shall have the right to suspend the performance thereof during such times, as they may think expedient, and again require the same to be resumed by the party of the second part, without being held liable for damages for any such suspension, provided that at least thirty days' notice shall be given to said party of the second part of any such suspension being required ; and that a reasonable extension of time shall be given to the said party of the second part for the completion of the contract for any detention caused by such *such* suspension. In testimony whereof, the said company has caused these presents to be signed by their president,
615 and the said party of the second part has hereunto subscribed his hand the day and year first above written.

(Signed) LA CROSSE & MILWAUKEE R. R. CO.,
By BYRON KILBOURN, *President.*
(Signed) S. CHAMBERLAIN.

This memorandum of agreement, entered into between the La Cross and Milwaukee Railroad Company, party of the first part, and Selah Chamberlain, party of the second part, witnesseth : That the party of the first has agreed, and by these present does agree, to and with the party of the second part, that in case the party of the second part fails to complete the railroad of the party of the first part to Kilbourn City by the first day of October, 1857, to the city of La Crosse by the thirty-first day of October, 1858, as stipulated in an agreement made and entered into this day, that no claim for damage shall be made for the non-performance of that portion of the said contract requiring the completion of the said railroad to the points at their respective dates above named, unless the railroad is not completed to Kilbourn City on the first day of November, 1857, and to the city of La Crosse on the thirty-first day of December, A. D. 1858.

And it is further agreed by and between the parties hereto, that in case the party of the first part fails to complete the bridges over the Wisconsin River, at Kilbourn City, by the first day of October next, as stipulated in the agreement hereinbefore mentioned, that no claim for damages shall be made by the party of the second part for the non-performance of that portion of the said contract requiring the completion of the said bridges on the first day of October, unless the said bridge is not completed by the first day of November, 1858.

In witness whereof, the said company have caused these presents to be signed by their president, and the said second party has hereunto subscribed his hand this twentieth day of January, A. D. 1857.

(Signed) LA CROSSE & MILWAUKEE R. R. CO.,
By BYRON KILBOURN, *President.*
S. CHAMBERLAIN.

SCHEDULE A A.

It is mutually agreed by and between the parties to the within contract that instead of a through cut at the dividing ridge, as stated in said contract, the said parties hereby agree to make a tunnel, and the following shall be the prices for the extra work, viz :

Excavation of approaches	$2 00	per cubic y'd.
Do. in tunnel	5 00	" " "
Arching " "	12 00	" perch.
Haul on stone over two miles	50	" "
Timber used in work, per lineal foot	25	" "
Packing	3 00	" "
Sinking shafts	10 00	" cubic y'd.

Should there be any work not specified herein, and required to be done, it shall be paid for at a fair price. The tunnel shall be 24 feet wide at
616 sub-grade of road, and 22 feet high under the arch, or of such other dimensions as the engineer of the first party may direct. All hauling to be as per contract.

(Signed) LA CROSSE & MILWAUKEE R. R. CO.,
By EDWIN H. GOODRICH, *Vice-President.*
S. CHAMBERLAIN.

Milwaukee, April 30, 1857.

SCHEDULE D.

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE R. R. Co.,
Milwaukee, Oct. 1, 1857.

Estimate of work done by Selah Chamberlain, contractor, on the western division of the La Crosse and Milwaukee railroad, between Portage City and La Crosse, from the commencement to the present date :

43 miles of main line completed between Portage City and New Lisbon, $12,000	516, 000 00
2¼ miles side track with above, $12,000	27, 000 00
Grading and masonry, equal to 9½ miles	96, 000 00
Extra work on earth hauled over 500 feet	41, 400 00
Grubbing and clearing 80 miles, at $300	24, 000 00
Solid rock excavation, 118,250 yds., at $1 00	118, 250 00
Loose " " 2,400 " " 75	1, 800 00
Roadway and cattle passes	11, 700 00
Excavations of foundations and timber for same	6, 500 00
Bank wall, 3,500 yds., at $3	10, 500 00
Tunnel approach excavations, 64,000 yds., at $2	128, 000 00
Pile bridging	2, 500 00
Tunnel culvert at Kilbourn City	2, 300 00
Ballasting 45¼ miles, at $2,000	90, 500 00
	$1, 076, 450 00

I hereby certify that the above estimate is correct.
E. W. WOODWARD.

SCHEDULE 1.

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE R. R.,
Milwaukee, October 1, 1857.

Estimated cost of work and materials required to complete the La Crosse and Milwaukee railroad to New Lisbon, (that is, from Portage to New Lisbon,) in manner and form as assumed on estimate made this day of work done by S. Chamberlain on the western division :

To complete grading and bridging	15,000 00
" furnish cross-ties necessary	5,000 00
" complete track-laying	11,000 00
" complete ballasting	25,500 00
	$56,500 00

I hereby certify that the above is correct.

E. W. WOODWARD, *Chief Engineer.*

617 EXHIBIT No. 10.—*Schedule G.*

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1857.			
April 2.	To invoice rendered.—See paper No. 1		19,538 35
4.	" " " " " 3		320 32
6.	" " " " " 3		2,178 18
June 10.	" " " " " 4		3,223 97
Sept. 11.	" " " " " 5		2,061 00
22.	" uncurrent money returned		2,061 00
Oct. 1.	" note No. 272 returned	10,000 00	
	Interest	530 55	
			10,530 55
1.	" note No. 280 returned	1,000 00	
	Interest	35 00	
			1,035 00
1.	" note No. 282 returned	3,934 40	
	Interest	137 70	
			4,072 10
1.	" note No. 288 returned	13,707 73	
	Interest	399 81	
			14,107 54
1.	" note No. 302 returned	12,719 60	
	Interest	423 98	
			13,143 58
1.	" note No. 343 returned	10,000 00	
	Interest	250 00	
			10,250 00
1.	" note No. 344 returned	8,228 00	
	Interest	205 70	
			8,433 70
1.	" note No. 279 returned		9,769 18
1.	" estimate for ballasting 192,542 c. yds., at 40 c.		77,016 80
1.	" filling bank, Beaver Dam		20,768 65
			198,259 29

1857.	CREDIT.	
April 2.	By note No. 278	9,769 17
2.	" " 279	9,769 18
4.	" " 280	1,000 00
4.	" " 281	1,000 00
4.	" " 282	3,934 00
4.	By warrant on treasurer	320 32
10.	" cash, 215 57, 740 60, 136 11	1,092 28

May	5.	" note No. 288	13 707 73	
	5.	" cash	726 57	
	30.	" "	1,285 06	
June	3.	" note No. 302	12,719 60	
	3.	" draft on Atwood & Co	1,938 91	
	30.	" cash	1,571 20	
618	July	10. By note No. 343	10,000 00	
		10. " " 344	8,288 00	
July	31.	By cash, 545 72 and 7 00	552 72	
Aug.	31.	" "	795 03	
Sept.	8.	" "	200 00	
	10.	" "	13 75	
	24.	" warrant on treasurer	4,500 00	
Oct.	1.	By balance Chamberlain & Alden	4,768 65	
				87,892 57
				$110,396 72

La Crosse and Milwaukee Railroad Company to S. Chamberlain, Dr.

For constructing 43 miles main line between Portage City and New Lisbon	516,000 00
For constructing 2¼ miles side track	27,000 00
" " grading and masonry for 9½ miles	96,000 00
" extra on earth hauled over 500 feet	41,400 00
" grubbing and clearing 80 miles, 300 00	23,000 00
" solid rock excavation, 118,250 yds., 1 00	118,250 00
" loose " " 2,400 " 75	1,800 00
" roadway and cattle passes	11,700 00
" excavations of foundations and timber for same	6,500 00
" bank wall, 3,500 yds., at 3 00	10,500 00
" tunnel approach excavation, 64,000 yds., at 2 00	128,000 00
" pile bridging	2,500 00
" tunnel culvert at Kilbourn City	2,300 00
For ballasting 45¼ miles, at 2,000 00 per mile	90,500 00
	1,076,450 00

1857.		CREDIT.	
March	9.	By draft on Atwood & Co	18,000 00
	9.	" " "	19,530 00
	19.	" " "	15,000 00
	19.	" " "	5,000 00
April	2.	" currency	6,184 00
	4.	" draft on Atwood & Co	25,000 00
	4.	" " "	18,856 00
	4.	" " "	10,000 00
May	5.	" " "	40,000 00
	5.	" " "	30,605 00
	29.	" " "	10,000 00
June	2.	" " "	10,000 00
	2.	" " "	10,000 00
	2.	" " "	8,000 00
	2.	" " "	20,000 00
	2.	" " "	67,470 00
July	7.	" warrant on treasurer	6,000 00
	7.	" currency	14,000 00

July 11.	" draft on Atwood & Co	15,000 00		
13.	" currency	5,000 00		
15.	" "	5,000 00		
18.	" currency	6,933 00		
	July 24. By draft on Atwood & Co	5,000 00		
619	24. " warrant on treasurer	5,000 00		
	24. " " "	5,000 00		
Aug't 1.	By currency	8,000 00		
7.	" draft on Atwood & Co	5,000 00		
7.	" currency	10,000 00		
8.	" "	10,000 00		
13.	" "	15,000 00		
22.	" my note given up	10,000 00		
22.	" currency	7,500 00		
Sept. 3.	" draft on Bank Republic	10,000 00		
4.	" " " 5,000, 5,000	10,000 00		
15.	" " "	5,000 00		
16.	" note, $456	149 00		
Oct. 1.	" my 3 notes, $10,000 each, given up	30,000 00		
	By amount deducted from estimate as being sum required to complete road to New Lisbon	56,500 00		
			557,727 00	
			$518,723 00	
			110,366 72	
			$629,089 72	

Paper No. 1.

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1856.			
Dec. 15.	For my two notes of this date payable in 3 mos. and 6 mos., $5,500 each, for 208 wheel gravel cars at 550		11,000 00
1857.			
Jan'y 8.	For my 3 notes to Wasson & Co. for 10 gravel cars		6,497 40
8.	For interest on $5,500 to Aug. 1, 4½ mos		219 38
8.	For interest on $5,500 " 1½ mos		74 25
8.	" " $6,497 40 " 2⅔ mos		149 80
8.	" freight on 20 cars from Hudson to Cleveland		46 80
8.	" freight on 20 cars from Cleveland to Toledo		201 60
8.	" freight on 20 cars from Toledo to Chicago		320 00
8.	" this amount for oiling do		22 88
8.	" J. A. Taylor for hauling cars, $50 and $30		80 00
8.	" freight from Chicago to Milwaukee		200 00
8.	" Galena and Chicago R. R. Co		40 00
8.	" freight 10 cars from Cleveland to Chicago		296 80
8.	" freight 10 cars from Chicago to Milwaukee		100 00
8.	" Galena and Chicago Union R. R. Co		50 00
8.	" paid John Miller for hauling 30 cars		123 00
8.	" E. Garfield expenses for cars		66 44
8.	" Q. " 20 days' time		50 00
			$19,538 35

620 *Paper No.* 2.

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1856.

Dec'r.	To cost of opening gravel pit and grading for side track to same—		
"	2 days,	R. Merrill, 2 00; 10½ by T. Shields, 9½	$47 81
"	12 do.	A. Meheme, 1 00; 11¾ by M. McCarty, 8½	23 75
"	9½ do.	to Con. Murphy, 1 00; 3½ by Pat Griffin, 8½	13 00
"	2 do.	M. Grunewal; 5½ by M. Holland, 8	8 50
"	8 do.	M. Murphy, 1 00; 8¾ by Jas. Owens, 8½	16 75
"	10 do.	J. O. Muley, 1 00; 9¾ by Pat Sullivan, 8½	19 75
"	8 do.	Jno. Moran, 1 00; 2½ Martin Devine, 8½	10 50
"	2½ do.	Morris Griffin, 1 00; 8¾ by Bart. Yaughlan, 8½	11 25
"	5 do.	Wm. McGill, 1 00; 7 by Pat Hughes, 1 00	12 00
"	5¾ do.	Pat Comey; 5 by Dennis Rugan	10 75
"	7 do.	Fred'k Carter; 6¾ by Arthur Regan, 1 00	13 75
"	3½ do.	Jas. Gordon; 2 by Stephen Caton, 1 00	5 50
"	4 do.	Mich'l Kennely; 2 by E. S. Pendergust	6 00
"	2 do.	Mich'l Kavanagh; 1 by Frank Finnely	3 00
"	1 day	Geo. Barton; 1 by Jerry Maloney	2 00
"	1 do.	Dan'l Maloney; 1 by Chas. Stearns	2 00
"	1 do.	Thos. Kennedy; 1 by Edw'd McCarty	2 00
"	1 do.	M. Sullivan; 5 by Jacob Straw, 3 00	16 00
"	5 do.	Oscar Straw, 2 00; 5 P. Hulbut, 1 50	17 50
"	4 do.	A. B. Bentley, 1 25; 5 by Anth'y Smith	10 00
"	Dale and team 1½ day, 3 00		4 50
"	for use of tools		64 06
			$320 32

Paper No. 3.

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1857.

March.	For cost of blocking up track, putting gravel on under same, and other necessary work to put track in running order between Midland and Portage City—		
"	James Rammons and party		66 10
"	Geo. Farrington and party		245 91
"	Jacob Straw and party		371 86
"	Mich'l Morris and party		108 94
"	R. Copeland and party		732 62
"	Wm. G. Rogers and party		652 75
			$2,178 18

621 *Paper No.* 4, *including the eight bills on invoices recapitulated below.*

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1857.

June 1.	For recapitulation, viz:		
"	No. 1, putting on chairs, respiking track, &c		$207 27
"	No. 2, putting on switch, &c., prairie, near Fox Lake		107 00
"	" 3, as above, Whitman Island		159 12

July 1.	For No. 4, as above, between Portage City and Midland	90	00
"	" 5, as above, Portage City	260	87
"	" 6, ties, chairs, and spikes	2,075	90
"	" 7, repairing gravel cars, &c	110	81
"	" 8, putting in switch and track, gravel pit, Portage City	213	00
		$3,223	97

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1857.			
April.	For the following labor, &c.: Respiking and bringing back into gauge, and putting in small chairs and taking out large ditto, between Portage and Pardeeville, Aaron Waterman 10 days, common labor 82 days	48	00
May.	" Aaron Waterman 2, common labor 6 days	11	30
"	" 8 kegs spikes, used as above, 800	48	00
"	" James Tray and four men, as above, 30¼ days	40	84
"	" 178 kegs spikes	10	68
"	" James Tray and three men, 1¼ days on canal bridge to let steamboat through, per order Leathe, engineer.	7	00
		165	82
	Add 25 per cent. for tools and superintendence	41	45
		$207	27

La Crosse and Milwaukee Railroad Company to S. Chamberlain, Dr.

1857.			
April	. To expenses putting in frog and switch and side track, Fox Lake, viz:		
"	Charles Abner, 2 days	6	00
"	Cunningham and Bracey, 4 days each	16	00
"	24 days common labor	26	40
20.	" 6 men, 1 day, extending do	7	20
May 15.	" Cunningham and Bracey, 4 00, and 6 men 1 day moving frog and switch, 7 20	11	20
15.	" 7½ days taking up frog and switch near Beaver Dam.	10	00
16.	" Cunningham and Bracey, 4 00; 4 men 1 day taking up track, 4 80 do	8	80
		85	60
	Add 25 per cent for tools, &c	21	40
		107	00

622 La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

For the following expenses: Putting in frog and switch and side track on Whitman's Island:

1857.			
March 11.	To Rogers and 4 men, ½ day		$5 20
30.	" " 4 " 1 "		10 40
31.	" " 4 " 1 "		10 40
April 4.	" " 3 " 1 "		9 30
4.	" Cunningham and Bracey, 3 days each		8 00
4.	" Dodge and 6 men, 3 days each		15 60
4.	" Cunningham and Bracey, 4 days in M'ch		16 00
	(The above for gravel pit north side of main track.)		
May 1 to 9.	" Cunningham and Bracey and 2 men, 5 days, frog and switch south side of main track		32 00
	" Bracey 6 00, and 4 men 3 days extending track, 14 40		20 40
			127 30
	Add 25 per cent. for use of tools and superintendence		31 82
			$159 12

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1857.	For expenses putting in frog and switch between Pardeeville and Portage City:		
April.	" C. Alder, 4 days		$12 00
	" Cunningham and Bracey, 4 days each		16 00
	common labor, 16 days		17 60
May 2.	" Cunningham and Bracey, 4 00, and 4 men 1 day, 4 80		8 80
" 4 & 5.	" Cunningham and Bracey, and 4 men 2 days		17 60
			72 00
	Add 25 per cent. for tools and superintendence		18 00
			$90 00

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

For the following expenses taking up side track at the Portage City gravel pit, and putting in frog and switch and laying side track south of depot:

1857.			
May 18-24.	For Cunningham and Bracey, 20 00, and 18 men 6 days, 129 60, taking up rack and straightening iron		$153 60
	Cunningham and Bracey, 20 00, and 5 men 5 days each putting in switch and laying side track south of depot, (was hindered by trains standing on track)		50 00
May 21.	For 4 men, ½ day, repairing engine-house track, Portage City		2 40
22.	" 2 men, ½ day, putting in cattle guards, order of Leathe, engineer		1 20
23.	" 3 men, ¼ day, repairing engine-house track		90
28.	" 2 men, ¼ day, repairing turn-table		60
			208 70
	Add 25 per cent. for tools and superintendence		52 17
			$260 87

623 La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

For the following chairs and spikes and ties in gravel pit on La Crosse and Milwaukee Railroad:

Ties.	Chairs.	Spikes.		
86	22	388	Pardeeville switch, from main track to turn-table.	
56	20	264	Do., turn-table into engine-house.	
.....	6	160	Do., turn-table.	
16	.....	.....	Do., support going off turn-table.	
33	32	300	Portage City engine-house.	
32	8	144	Do., side track off turn-table.	
236	73	709	Do., temporary side track, south depot, Portage City.	
620	170	2,990	Do., gravel pits.	
580	150	2,910	Gravel pit between Portage City and Midland.	
561	156	2,968	Gravel on Whitman's Island, north side.	
154	47	729	Gravel on Whitman's Island, south side.	
140	40	1,100	Fox Lake gravel pit in Prairie.	
225	138	2,754	Fox Lake piling.	
256	.....	.....	Fox Lake distributed for side track.	
70	14	300	Canal bridge near Portage City.	
.....	.....	300	1 keg taken by Hansley from Beaver Dam station.	
180	74	200	Side track near Beaver Dam.	
.....	.....	16,116	Spikes, ½ pound each, 8,058, at 5 cents.	$402 90
.....	1,000	.....	Chairs, at 3¾ cents each.	375 00
3,245	.....	.....	Ties, at 40 cents each	1,298 00
				2,075 90

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1857.

March 11.	For Rogers and four men one half day putting in side sticks for culvert, Luke Robert.....	$3	90
19.	" Rogers and twenty men one half day work on track, passenger train off track and engine taken to haul train to Fox Lake.....	12	50
25.	" two men one half day getting freight cars on track for Kelly.....	1	20
26.	" five men one half day repairing culvert between Midland and Portage City.....	3	00
30.	" one man three days wheeling sand into engine-house, Midland.....	3	00
Feb'y 12.	" for this amount paid for mending coupling link.....		38
19.	" this amount paid for woodwork on cars.....	1	00
March 11.	" coupling-iron on engine repaired.....	1	00
21.	" mending hook on engine.....		50
26.	" " draft iron.....	1	00
May	" Yale's bill for 1,491 foot lumber for side-boards to cars	26	83
	" Smith & Blair, twelve roller-stands for gravel cars, 502 lb. at 5c.....	25	10
	" drilling and putting screws in same.....	8	64
		$88	65
	Add 25 per cent.....	22	16
		$110	81

324 La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1857.

For laying side track, putting on switches, &c., Portage City gravel pit:

April.	" John Seymour,	9 days, $3 00		27 00
	" James Marmehan,	4 days, 1 00		4 00
	" Michael Calligan,	4 " "		4 00
	" John Convey,	6 " "		6 00
	" Patrick McCarty,	4 " "		4 00
	" Patrick Sullivan,	2½ " "		2 50
	" Cormick Cummings,	4 " "		4 00
	" Martin Ryan,	3½ " "		3 50
	" Nichol Doyle,	3 " "		3 00
	" Albert Sargent,	2½ " "		2 50
	" Alexander Ogden,	9 " 50		4 50
	" Dan'l Cunningham,	3½ " 2 00		7 00
	" R. N. Copeland,	1 Sunday		3 00
	" George B. Tripp,	1 Sunday		3 00
	" S. H. Bailey,	1 Sunday		3 00
	" James May,	1 Sunday		2 25
	" common labor,	24 Sundays		26 40
	" Jacob Straw,	3 days		7 50
	" common labor,	18 "		18 00
	" Lyman and Cunningham, 3 days each and 22 days common labor			34 00
				170 40
	Add 25 per cent., use of tools and superintendence			42 60
				$213 00

Paper No. 5 *includes the right bills following the recapitulation below.*

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

For recapitulation:

April.	" blacksmith account		$10 75
May.	" repairing bridges, &c.		135 25
April & May.	" blacksmith		79 13
June.	" "		265 44
July.	" "		279 36
	" labor, &c., canal bridge		107 67
	" " Portage Prairie		373 69
	Bill detentions		559 08
			$1,810 37

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1857.

April 30.	For repairing coupling bunter	$3 00
	" " " links	50
	" " shackle bar	1 50

625	April 30.	For 4 bolts for brake, 75c.; repairing switch, 1 50	.....	2 25
	May 18.	" " coupling	.....	3 00
				$10 75

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

May 6.	For 17½ days moving switch, Fox Lake gravel pit	.....	21 00
8.	" Bailey and 10 men 1 day repairing canal bridge	.....	15 00
18.	" Bailey and 8 men 1 day repairing Fox River bridge	..	12 60
16.	" Rogers and 17 men ½ day, to Fox Lake fund	.....	11 70
20.	" Farrington and 24 men, ¾ getting cars on track when freight run off track at Fox Lake piling	.....	23 85
22.	" putting in crossing at Chesstreets	.....	2 00
24.	" Rogers and 22 men, to Fox Lake after wood, ¾ day	..	22 05
	Add 25 per cent. for tools, &c	.....	27 05
			$135 25

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

April 20.	For repairing dump car, 3 00; hook on switch rope, 1 50	.	4 50
28.	" repairing brake, 1 00; repairing brake on flat car, 75c.		1 75
29.	" repairing bunter strap and colt	.....	75
	" 3 chock blocks, dump car	.....	1 00
	" repairing latch on dump car	.....	75
30.	" " bunter on " "	.....	1 75
May 1.	" " 2 doors on dump car	.....	2 50
	" 4 switch bolts for stand	.....	1 00
	" mending brake on flat car	.....	50
2.	" section 15, repairing bar	.....	75
4.	" repairing bunter bolts and plate on flat car	.....	1 00
6.	" 1 spring colt on frog	.....	75
	" frog bolts	.....	60
	" mending guard rail	.....	50
7.	" section 15, sharpening chisels	.....	25
	" mending spring-hanger, engine No. 11	.....	1 00
6	" mending coupling links	.....	60
	" mending chair, engine No. 11	.....	13
	" hanging door on dump car	.....	50
11.	" chock blocks, 75c.; repairing bunter, 1 00	.....	1 75
	" repairing bar, section 15	.....	75
12.	" engine No. 11, straightening strap	.....	25
14.	" straightening and mending bunter	.....	3 00
	" 4 bolts do., 2 50; mending coupling pin, 50c	.....	3 00
16.	" mending bunter, 1 25; welding coupling, 25c	.....	1 50
18.	" 4 new bolts, and repairing wood work	.....	3 00
	" 3 new brake heads on cars, and chains, hooks, and bolt		1 50
19.	" sharpening chisel for sec. 15	.....	25
	" repairing bunter irons, 4 75; 1 bolt, and repairing brake, 50	.....	5 25
20.	" 1 eye bolt on brake stand	.....	25
	" 19 lbs. coupling link and mending	.....	2 15
626 21.	" 40 lbs. iron on car, strap, and plates	.....	4 80

May	21.	For repairing 4 bolts, 1 00; mending bunter, 1 00	2 00
	"	mending brake, 75c.; 228 bolts, 1 00	1 75
	22.	" shortening 4 new hooks, and bolts, and brake	1 25
	"	taking off and bending 4 levers	1 00
	"	4 new nuts, 25c.; 4 new bolts, 50c	75
	23.	" putting on brake, 50c.; welding 3 links, 75c	1 25
	"	2 new pins, 1 00; 2 straps on stake iron, 75c	1 75
	25.	" 2 bolts on bunter, 50c.; long rod on brake, 50c	1 00
	26.	" mending bunter and 1 pin, 50c.; cutting and mending brake, 1 25	1 75
	27.	" brake, S hook, and bolt, 50c.; repairing bunter, 3 00	3 50
	28.	" 1 bolt in bunter, 20c.; shortening brake, 25c	45
	"	shifting 2 brakes on cars	3 00
	29.	" repairing bunter, 1 00; repairing hand-car, 50c	1 50
	"	taking off bunter and repairing two bolts	2 00
	"	shifting brake	1 00
	"	repairing spring hang on engine No. 11	1 00
	"	26 repairing plate and bolt	2 65
	30.	" shortening brake, new chain and eye	1 50
	"	2 bolts, staple, and plate for bunter	2 00
			$79 13

La Crosse and Milwaukee Railroad Co. to S. Chamberlain, Dr.

1857.

June	1.	To 1 colt on brake, 20c.; shifting brake on flat, 1 50	$1 70
	"	4 coupling pins, 1 50; 9 staples, 90c	2 40
	"	1 brake bar and repairing do., 1 00; splicing draw bar 10 00	11 00
	"	repairing door and 3 catches, 4 00; putting on roller stand	6 00
	"	repairing brake, 1 00; 4 new chock blocks, 2 75	3 75
	"	repairing 2 chock blocks on beam, 1 50; repairing bolts and iron, 4 00	5 50
	"	2 coupling pins and links, 1 25; 2 rods and 3 bolts, 75c	2 00
	8.	" 4 new log mill, &c.; repairing brake-rod on flat, 15c	15
	9.	" new storup and bolt, 75c.; new brake, with rods, &c., 4 00	4 75
	"	repairing bolts, rocker, and iron work, 2 00; cross beam on dump, 2 00	4 00
	"	new centre stay, 50c.; 2 dump blocks, 50c	1 00
June	1.	" 2 hasps and staples, dump cars, 50c.; repairing brake and stand, 1 00	1 50
	"	1 bolt on dump car, 25c.; repairing brakes on flat	45
	"	repairing bumper, 25c.; brake stand and 2 bolts, 1 00	1 25
	10.	" coupling piece and chain, 75c.; repairing brake on flat car, 25c	1 00
	"	repairing brake, 25c.; repairing keying on wheel, 50c.	75
	"	2 new church on draw bearer; 2 do. on centre beam	5 00
627	22	" 2 coupling pins and chains, 1 50; repairing doors and brake stands, 1 00	2 50
	"	hasp and staple for dump, 25c.; straightening draw 16, 50c	75

June 12.	To	4 large nuts for engine No. 16, 50c.; repairing bunter, 50c.	1 00
	"	repairing bunter dump, 50c.; coupling pin and broken stand, 50c.	1 00
13.	"	2 coupling pieces and chains, 75c.; repairing bunter flat, 75c.	1 50
	"	repairing brake and stand flat car, 50c.; repairing brake, 25c.	75
	"	bunter on flat car, 2 50; repairing stirrup, iron bolts, &c., 1 25	3 75
	"	jacking up car and packing, 2 50; 2 blocks on centre, 1 50	4 00
15.	"	2 block draw bar, 1 50; 2 new boxes on boxes, 50c.	2 00
	"	repairing bolt and nut, 15c.; 3 coupling pins	1 65
17.	"	repairing 2 bunters on flat car, with 9 new bolts and stirrup	6 00
	"	repairing 2 brakes on flat, 1 00; 3 new coupling pins, 1 50	2 50
	"	repairing 2 brakes, jacking up car, and replacing springs on dump	1 00
	"	2 new latches on car door, 75c.; repairing dump door, 2 50	3 25
19.	"	2 bolts and bunters, flat car, 2 50; 3 coupling pins, 1 13	3 63
	"	new corner stay for dump, 50c.; latch on dump, 38c.	88
20.	"	repairing truck frame with new bolts, 3 00; 2 coupling pins, 75c.	3 75
	"	2 dump blocks, 2 00; 3 coupling pins, 1 12	3 12
	"	2 dump blocks, 2 00; repairing brake with new, 1 25	3 25
	"	repairing bunter on dump car, 2 00; brake on flat, 50c.	2 50
23.	"	repairing bunter on flat car, 1 00; repairing rod and chain, 1 50	2 50
	"	3 coupling-pins, 1 12; 13 link coupling, 1 00	2 12
	"	3 new cast-iron caps, and putting on	50
	"	4 chock blocks for dump dars, 1 00; 29, repairing dump block	1 25
	"	6 days by R. A. Brownson, repairing wood work on cars	12 00
30.	"	repairing tracks and putting under cars, 6 00; bolts on dumps, 25c.	6 25
	"	putting on castings, 1 00; putting on rods, 75c.	1 75
31.	"	repairing door dump car, 75c.; repairing bunter, 50c.	1 25
	"	repairing bunter, 50c.; bolt on stirrup, 75c.	1 25
	"	sharpening chisels for Robinson Liesman	1 00
20.	"	this amount paid Smith & Blear for roller stands, 317 a 5c.	15 86
June 20.	"	this amount paid for 12 half boxes, 22c.	1 10
	"	this amount paid for drilling and putting set screws on same	5 76
	"	this amount paid for 9 pieces bump iron, 2 73	13 65
June 20.	To	this amount paid for 5 roller stands, 1 98; drilling and setting, 3 60	13 50
628	"	this amount paid for 3 roller stands, 1 59	5 95
	"	this amount paid for drilling and setting on same	2 16
	"	4 days wheeling and grading turn-table, Portage City	5 00

June 20.	To 2 men as above		5 00
25 & 26.	To 16 days' labor, grading, &c., depot grounds		20 00
	" 4 men, ½ days to Midland for wood		2 50
	" 12 wheelbarrows, per order W. Kithridge		36 00
	Add 25 per cent. on labor		8 12
			$265 44

La Crosse and Milwaukee Railroad Co. to Selah Chamberlain, Dr.

1857.

July 2.	To 1 new bunter and bolts, 5 00; 4 bolts for stump, 1 00		6 00
	" 2 dump blocks, 75c.; 3d, repairing plate engine No. 11, 12c		87
	" repairing bunter flat car, 2 00; repairing 3 brake chains, 75c		2 75
	" 2 dump blocks, 75c.; 4 chock blocks, 2 00		2 75
	" raising bed piece and bolts, 1 50; making key bunter 10c		1 60
6.	" 2 dump blocks and fastening brake, 1 25; mending brake, 60c		1 75
	" repairing draw bar, 1 00; 4 chock blocks, 2 00		3 00
	" gripe on casting for dumper, 75c.; new bench for dumper, 1 00		1 75
7.	" putting on track dump, 2 00; repairing doors and bolts, 75c		2 75
	" 10 bolts, 3 00; 4 bolts on bunter, 1 00		4 00
	" repairing bunter on flat, 1 00; 1 eye and bolt, 1 00		2 00
	" raising door on dumper, 1 25; 8th, 4 bolts on dumper, 1 50		2 75
8.	" raising bunter on flat, 2 00; repairing stirrup on flat, 2 00		4 00
9.	" 2 latches, 1 75; 6 sets for flat car, 2 00		3 75
	" 1 stirrup and bolt for flat, 1 25; 1 new draw bar, 3 00		4 25
	" repairing 3 coupling pins, 75c.; repairing coupling link, 25c		1 00
	" 4 bolts for dump, 1 00; 4 chock blocks dump, 1 00		2 00
10.	" 1 door post and repairing door on dump car		2 50
	" putting on new castings and bolts		1 00
	" repairing brake chain and rod		50
	" 2 dump blocks, 75c.; 1 check block for dump, 25c		1 00
	" 4 bolts for dump car, 1 00; 11th, repairing bunker dump, 2 20		3 20
11.	" repairing brake on dumper, 2 00; repairing truck frame, 50c		2 50
	" repairing door on dumper, 75c ; 15th, draw-bar engine, 3 50		1 25
13.	" 1 stirrup for dump car, 1 00; coupling pins, 25c		1 25
629	To repairing door dump, 50c; 2 door posts on dump car, 1 50		2 00
	" repairing brake on flat, 50c; repairing brake on dump, 1 00		1 50
14.	" 1 catch dumper, 1 00; 1 dog for brake, 50c		1 50
	" iron for Portage Prairie switch		2 50
	" 3 coupling pins for flat, 2 50; repairing brake chain, 37c		2 87

July 14.	To 2 bolts for dumper, 50c.; 15th, repairing bunter flat, 3 00		3 50
15.	" 1 catch dumper, 25c.; 2 bolts for dumper, 1 00		1 25
16.	" 14 staples for flat, 1 75; 1 catch for dumper, 1 00		2 75
	" repairing doors on dump, 1 000; 17th, 1 stirrup for flat, 1 50		2 50
17.	" bolts in dumper for bunter, 50c.; 2 straps for bunter, 1 50		2 00
	" 6 bolts for flat, 1 50; repairing draw bar flat, 4 00		5 50
	" 4 bolts in bunter dump, 1 50; 20th, draw bar dump, 8 00		9 50
20.	" 4 bolts in bunter dump, 1 50; bunter flat car, 1 50		3 09
21.	" repairing draw bar, 4 00; 2 straps and 6 bolts, 3 00		7 00
	" stirrup for flat, 50c.; 22d, 8 bolts for dump car, 2 00		2 50
22.	" 2 plates for draw bar, 75c.; repairing draw bar dump car, 8 00		8 75
	" repairing 3 doors, 1 00; 23d, stirrup, and bolts, and flat, 1 00		2 00
23.	" brake rod and brake for hand car section man		75
	" 2 straps and 4 bolts on draw bar dumper car		1 50
	" repairing draw car dumper car, 8 00; repairing brake, 25c		8 25
24.	" 2 straps for bunter car, 1 50; 6 bolts for bunter flat, 1 50		3 00
June 27.	" repairing bunter on flat, 4 00; 2 bolts door bumper, 50c		4 50
	" repairing door bumper car, 75c.; 4 dead wood flat, 1 25		2 00
	" repairing stirrup flat car, 25c; repairing chain flat, 50c		75
	" 1 brake strap, 1 25; putting on 3 castings, 1 00		2 25
25.	" repairing brake flat, 50c.; 6 bolts for dumper, 1 50		2 00
	" repairing brake engine No. 11, 50c.; repairing 2 brakes, 3 00		3 50
	" 4 chock blocks, 1 00; 10 bolts for do., 2 50		3 50
	" new draw bar, 8 00; repairing 3 doors dump, 1 00		9 00
27.	" brake lever and rod, 2 00; 2 latches for dumper, 1 00		3 00
	" 1 catch for dump, 50c.; 4 bolts, 75c		1 25
	" repairing 2 track frames, 2 50; repairing 1 do. flat, 1 00		3 50
	" repairing rocker 2 dumps, 1 00; repairing brakes 4 dumps, 4 50		5 50
	" 2 dump blocks, 75c.; 28th, 3 doors on dump, 1 50		2 25
28.	" 1 dump and repairing fastings, 1 00; repairing brake on dump, 10c		1 10
	" repairing floor on dump, 1 00; 11 bolts for dump, 1 50		2 50
	" repairing stirrup on flat, 37c.; 1 door catch dump, 50c.		87
	" 1 catch, 50c.; 1 coupling pin, 50c.; 1 long coupling, 1 50; 4 bolts		3 25
630 29.	" 1 draw bar for dump, 8 00; repairing doors, 50c		8 50
	" repairing brake on dumper, 75c; 2 brake rods, flat, 1 00		1 75
	" repairing bunter on flats, 1 25; 7 bolts for dump, 1 50		2 75
	" repairing braces on dump, 50c; 3 bolts for dump, 38c		88
30.	" repairing 3 coupling pins, 1 50; repairing brake flat.		2 00
	" 10 bolts, dump, 1 88; 2 plates, dump, 63c		2 51
	" repairing brake on flat, 50c.; repairing cans to spring, 1 50		2 00

June 30.	To repairing 3 doors on flat, 1 00; 31st, draw bar on head block, 11 00	12 00
31.	" putting catch on dumper, 10c.; 2 bolts for dumper, 10c.; 2 bolts for dumper, 63c	73
	" catch for dumper, 50c.; coupling shonghair, 2 00	2 50
	" brake chain for No. 11, 50c.; 4 bolts for dump, 75c	1 25
	" ironing dump blocks	75
	For amount paid J. D. Wheelock for 1,440 feet timber	28 80
	" amount paid Smith & Blair roller stands, 54c	4 78
	" amount paid Smith & Blair 24 roller stands, 2 83	14 15
	" coning and drilling same	9 00
		$279 36

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

For labor and materials on canal bridge:

C. L. Steward 1½ days, 3 00	$4 50
R. N. Copeland 1½ days, 3 00	4 50
E. N. Beers 1½ days, 2 00	3 00
Common labor 12½ days, 10	15 62
21 ties at 40c	8 00
24 chairs	9 00
300 spikes	15 00
4 p's 12 by 12 timber, 64 feet, at 20c	12 80
20 plank, 147 feet, at 18 00 per M	25 46
Add 25 per cent. on 37 62 for tools, &c	9 40
	$107 68

La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

For labor and materials on side track, Portage Prairie:

S. H. Bailey, 7 days	21 00
Common labor, 79 days, 10	98 75
350 ties, 40c	140 00
82 chairs, 3	31 50
7 kegs spikes, 10 50, at 5	52 50
Add 25 per cent. on 119 75 for tools and superintendence	29 94
	$373 69

631 La Crosse and Milwaukee Railroad Company to Selah Chamberlain, Dr.

1857. For the following detentions to gravel trains and men:

March 12.	For Ru. Copeland and 11 men 1½ hs. bailing water	2 00
13.	" Ru. Copeland and 12 men 2 hs. bailing water	2 40
13.	" Ru. Copeland and 12 men 1 hr. bailing water	1 20
14.	" Ru. Copeland and 12 men 1 hr. bailing water	1 20
15.	" Ru. Copeland and 12 men 1 hr. for bailing water	1 20
16.	" Ru. Copeland and 12 men 1 hr. for bailing water	1 20
19.	" Ru. Copeland and 44 men detained ½ day, engine away to assist passenger train	23 50
19.	" Farrington and 4 men 1 hour bailing water	3 50

March	20.	For Copeland and 47 men detained 1 hour, engine pumping up passenger engine	5 00
	20.	" Farrington and 4 men detained as above	1 00
	21.	" Copeland and 47 men detained 1 hour, engine switching Portage City yard	5 00
	21.	" Farrington and 4 men ditto, as above	1 00
	25.	" Rogers and 25 men detained 4 hours by freight train	9 33
April	1.	" Ranors and 32 men detained ½ hour by freight train	3 50
	6.	" Ranors and 32 men detained 1¾ hours by freight train	4 37
	7.	" Ranors and 32 men detained 2¼ hours by freight train	6 50
	23.	" Rogers and 40 men detained by freight train from 1.50 p. m. till 5.30 p. m., 2 50	10 75
	23.	" Pearod and 31 men detained by freight train 1¾ hours, as above	5 25
	25.	" Cadwell and Farrington with 30 men ¼ day, by engine broken down	9 00
	27.	" Cadwell and Farrington with 30 men ½ day, as above	18 00
	28.	" Cadwell and Farrington with 30 men ¼ day, helping passenger	9 00
	27.	" Cadwell and Farrington with 4 men bailing water ½ day	2 00
	27.	" Rogers and 40 men detained by freight 4 hours	10 75
	27.	" Pearod and 33 men detained by freight 3 hours	9 58
May	1.	" Copeland and 40 men detained ½ day, engine broke	25 50
	2.	" Copeland and 40 men detained 1 hour, engine freight off	3 90
	4.	" Copeland and 40 men detained 1 hour, wood and freight train on track	3 90
	9.	" Copeland and 36 men idle ¼ day, engine went off	11 42
	18.	" Copeland and 36 men idle ¼ day, engine went to P. City,	11 42
	22.	" Copeland and 36 men idle ¼ day, engine went to P. City	11 42
	6.	" Caldwell and 24 men idle ¾ day, engine broken	23 10
	6.	" Farrington and 4 men idle ¾ day, engine broken	5 10
	12.	" Caldwell and 24 men idle ¾ day, engine broken	23 10
	12.	" Farrington and 4 men idle ¾ day, engine broken	5 10
	13.	" Caldwell and 24 men idle 1 day, engine broken	30 80
	13.	" Farrington and 4 men idle 1 day, engine broken	6 80
	29.	" Caldwell and 24 men ¾ day, engine broken	23 10
	29.	" Farrington and 4 men ¾ day, engine broken	5 10
	20.	" Dodge and 26 men detained ½ day, engine off	17 85
	22.	" Dodge and 27 men detained ½ day, away for repairs	18 45
	22.	" Daniells and 31 men detained by freight 1¾ hours	4 25
632	22.	" Tripp and 4 men detained 1 hour, freight 1½ hours behind	80
June	2.	" Copeland and 36 men detained 1½ hours, engine broken	5 82
	11.	" Copeland and 33 men detained ¾ day engine broken	32 81
	13.	" Copeland and 22 men detained ¼ day, engine broken	7 50
	8.	" Copeland and 36 men detained 2½ days by passenger train	9 15
	2.	" Stewart and 3 men 1½ hours, engine broken	67
	11.	" Stewart and 3 men 3¼ days, engine broken	4 50

June	13.	For Stewart and 3 men ¼ day, engine broken.....	1 50
	4.	" Caldwell and 35 men detained by freight ¼ day....	11 56
	7.	" Caldwell and 35 men detained ½ day, engine broken	23 12
	8.	" Caldwell and 34 men detained ½ day, engine broken	22 50
	4.	" Farrington and 4 men detained ¼ day by freight train.....	1 87
	7.	" Farrington and 4 men detained ½ day, engine broken	3 75
	8.	" Farrington and 4 men detained ½ day, engine broken	3 75
	6.	" Tripp and 4 men detained 1½ hours by freight.....	1 00
	24.	" Tripp and 4 men detained 1¼ hours by freight....	1 00
	27.	" Tripp and 4 men detained 1 25-60 hours by freight.....	1 00
	29.	" Tripp and 4 men detained 1¼ hours by freight....	1 00
	30.	" Tripp and 4 men detained 1½ hours by freight....	1 00
	8.	" Daniels and 27 men detained ¼ day by passenger train.....	9 06
	4.	To Bailey and 26 men detained 2 hours by freight....	5 83
	4.	To Bailey and 30 men detained, No. 14 bursting steam pipe.....	1 00
	8.	" Bailey and 24 men detained by freight train 1 hour	2 70
			$559 08

[For map see original.]

In case of Bronson and Soutter *vs.* La Crosse and Milwaukee Railroad Company *et al.*

[No plat on file in this cause.]

633 EXHIBIT No. 24.

District court of the United States for the district of Wisconsin.

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Selah Chamberlain, Byron Kilbourn, Moses Kneeland, James Ludington and others. } In equity.

Deposition taken on the part of the complainant before Winfield Smith, one of the masters and commissioners of this court, pursuant to a stipulation filed in this cause.

Mr. M. H. Carpenter, of counsel for the complainant; Mr. Butler, of counsel for the defendants Ludington, Kneeland, and the La Crosse and Milwaukee Railroad Company, and Mr. Emmons, of counsel for the defendant Chamberlain.

WEDNESDAY, 12*th May*, 1858.

Proceedings adjourned to Thursday, 27th May, 1858, at 10 a. m. Byron Kilbourn, being duly sworn for the complainant, testifies and says:

(Mr. Emmonds objects to the competency of the witness on account of his being a party to the suit.)

I was president of the company at the time of making the contract for building the road from Portage to La Crosse. My impression is that the contract was made by the board. I know that certain subsequent contracts have been made modifying that contract. This was while I was president of the board.

Question. At the time these modifications were made, did you know of or approve of them?

(Objected to.)

Answer. One of the modifications was made when I was not here. This was in regard to the construction of the tunnel. The date of this contract was April 30, 1857. I think it was indorsed on the back of the other contract. The second modification extended his contract, and was made with my co-operation.

Question. By whom was this modification of the contract made in regard to the tunnel?

(Objected to as irrelevant, and a matter with which the plaintiff has no concern.)

Answer. I only know from the signatures to the paper. It is executed by Mr. Goodrich, vice-president, on the part of the company, and by Mr. Chamberlain for himself.

Question. Was that indorsement made on its date or subsequently?

(Objected to for the same reason as before.)

Answer. I have no knowledge.

(Mr. Emmons objects to all inquiries and testimony on this subject.)

634 I saw this indorsement about the time I made my answer in this case, but I first heard of the existence of the agreement at or before my return home. I made myself a survey of the summit and tunnel in April. I returned to La Crosse with the chief engineer, and wrote to Mr. Goodrich to make an arrangement with Mr. Chamberlain to do the work. I transmitted the letter with sundry verbal communications by Mr. Woodward, the chief engineer. He returned to Milwaukee, and I went on to St. Paul. Subsequently, and within three or four weeks, he joined me at Prescott, on the Mississippi River. That was about May 20. I think I learned from him that the company had arranged with him for the construction of the tunnel work. I speak of the modification of the contract in regard to the work.

Question. Did Mr. Goodrich, in price, terms, &c., follow out your directions?

(Objected to for the same reason.)

Answer. I don't think my letter could be properly construed into directions. Those were for the board to make. My letter inclosed an estimate made by me and Mr. Woodward.

Question. How did the estimate correspond with the contract price?

(Objected to.)

Answer. I can't say. I recollect generally that the contract price was higher than the estimate; I can't say how much higher. The stone work was some higher, and the earth work a good deal higher. I don't remember the original estimate. My impression is, that the aggregate cost by the estimate was $70,000 or $80,000. The increase of cost under the contract is owing, I suppose, as much to the increase of quantities as to the increase of prices.

Question. Had there been, up to the time of the Chamberlain judgment, any ratification by the board of the contract made by Goodrich?

(Objected to.)

Answer. I am not aware of any action of the board subsequent to the action of the executive committee in making the contract. That is the action of the board, unless repudiated by them, under our laws. I suppose they could not repudiate an executed contract. The executive committee consisted of myself, president, and Mr. Goodrich, vice-president, ex-officio, and Moses Kneeland, Samuel Brown, and Garrett Vleitt, directors. I was present, and acting in the board, when the judgment was confessed in favor

of Chamberlain, and when the lease was given to him. The lease was given previous to the judgment. The lease was given during the pendency of the suit with Cleveland. I think Mr. Chamberlain first proposed that the lease should be given to him as the embarrassments of the company grew more apparent. Mr. Chamberlain, of course, grew anxious about his pay. When I went home in the early part of September, 1857, he expressed much uneasiness as to his security. He urgently requested of me to make him some specific security. This was about the first of September. He explained to me, at considerable length, the danger that he might not receive his pay for the work he was then doing; that he was expending a good deal of money, had a great many men at work, and had drawn largely on his means and the means of his friends. The company was largely in arrears to him on the contract. He had heard of dissatisfaction on the part of
635 Vose, Livingston & Co., of whom he had purchased the iron, on account of not making payments to them, and that they threatened to reclaim the iron. He wanted some assurance and security that he would receive his pay at some time, or else he would have to suspend his operations. He stated to me that he had urged this very strongly on the directors. He urged it very strenuously on me. He seemed to think he was incurring too large responsibilities on uncertainties. I told him on my part, on behalf of the company, that I thought we had financial arrangements then made, by the issue of a million of second mortgage bonds, by which we could pay off his estimates, and that such security would therefore not be necessary at that time. In consideration of those views, I advised against it. I told him that although I was willing to do anything to accommodate him, I was afraid that would injure our credit and hinder us in raising funds. The result was, that we did not go into it at that time. We gave him at that time, however, the assurance that if we should be disappointed in raising funds, we would give him all the security we could; that the great point with us was the completion of the road, and that we would protect him at all times as far as we could. In this he acquiesced, though urgent to the last that we should do as he desired. As we did not see fit to do so then, his parting remark to me was, that he should depend on us to see him safe against all harm. I told him that from the prospect we then had, I thought we should be able to pay him $150,000 in the ensuing month, (September.) I left here on the fourth of September for New York. When I reached there, after an absence of about three weeks, I found that our prospects for raising funds from this source was very much diminished. I think we did not, in fact, pay him that month more than $15,000. I found, as September and October progressed, that we were getting deeper into embarrassment, and that an association of bondholders was forming around us, who were thwarting all our efforts, and I saw but one way to save the road and secure its ultimate completion, which was to make this lease to Mr. Chamberlain. When I became fully convinced of this, I returned home for this purpose. I had a great amount of anxious reflection, and came fully to this conclusion. I laid views before the board, who had come to the same conclusions before, and we went on and made the lease at the time and in the manner that the records show.

Question. What dangers did you propose to guard against by giving the lease?

Answer. I have already explained that fears were entertained of combinations of bondholders being formed sufficiently strong to counteract our efforts in raising money to meet our liabilities and progress with the work, and that danger of this had become so imminent, and was growing so apparent, that the only remaining hope for the continuance of work on the road, seemed to be to give Mr. Chamberlain such a lien upon it as would

assure the payment of what had already become due for work then done, as well as for that to be done, under this contract. This was the great and paramount danger which threatened to overwhelm the company, but there were other and nearer dangers threatening us, more immediately
636 against which it was equally necessary to guard. There had been one or two instances of attachment sued against the company, for indebtedness to the amount of a few hundred dollars; and it seemed quite evident that by such means the company's resources would soon be so exhausted as to render it entirely powerless for further progress. The floating debts of the company amounted to perhaps some $300,000, in small sums varying from a few dollars to some hundreds, and in some cases to a few thousands. If sued under attachments, under the influences of panic, as no doubt they would have been, would effectually arrested the progress of the work, and prevented the completion of the road. These were the dangers against which the board felt it to be its duty to guard by every lawful means in its power.

Question. When you represented the dangers to the directors on your return, what dangers did you state? and how did you propose, through the lease, to guard against them?

Answer. This question is substantially answered by the foregoing answer. The board of directors fully comprehended the embarrassments of the times and the dangers which threatened a suspension of work on the road without being communicated by me, and some of the directors had been anxious, as a safeguard to the company, to make the necessary liens at a much earlier period, and doubtless would have authorized it to be done in the latter part of August or first of September, except for reasons assigned by me against it at the time.

Question. At the time of giving the lease was the amount of indebtedness to Chamberlain known?

Answer. No.

Question. At the time was it agreed that judgment should thereafter be confessed?

Answer. I do not think there was any distinct agreement that a judgment would be confessed by the company for the amount due Chamberlain at the time of making out the lease, but it was the interest of the company to give him a perfect lien upon the road and its earnings, to secure all indebtedness, past and accruing, under his contract until the whole should be paid; and such was one of the conditions of the lease, without reference to the specific amount.

Question. Why did you not wait before giving the lease until you had ascertained the indebtedness?

Answer. Because the amount of indebtedness at that or any other particular time was not a necessary element in the lease.

Question. When did you first agree to give a judgment to Chamberlain, and why did you conclude to give it?

Answer. There was no agreement, properly so speaking, to give Mr. Chamberlain a judgment, except the order made for that purpose by the board. This was on the day and at the time when the papers for that purpose were made out, which date I do not remember; but it can be ascertained by reference to those papers. The reason why this order was made I understood to be in consequence of a doubt entertained by the counsel of Mr. Chamberlain whether some legal difficulties might not be raised as to his lease lien covering the iron not laid down on the road; and to avoid all questions in this respect, and, in fact, to render the transaction as regarded a lien as
637 perfect as possible, and thereby accomplish the ends proposed to be secured by it, it was deemed advisable by the board, under advice

of counsel, to give the force of a judgment in support of the previous lien for the amount then reported to be due.

Question. Had you then ascertained the indebtedness, and how? Have you not stated that it was not then ascertained?

Answer. At the time of giving the judgment the amount due Mr. Chamberlain had been ascertained by a report from the chief engineer, Mr. E. W. Woodward, whose statement was considered conclusive by the company. I have never stated that the amount then due was not then ascertained. This question is propounded, as I understand, in consequence of a statement made by Mr. Cleveland, complainant in this pending suit, before the late committee of investigation of the legislature, and to his counsel. In this statement Mr. Cleveland has fallen into several mistakes, the most essential of which is in relation to the matter of this question, and is as follows: "Chamberlain, he (Kilbourn) said, took the lease and was gone into the country some two days; then returned and told him (Kilbourn) that he (Kilbourn) had *had* made the lease to him to prevent Cleveland from getting possession of the road; that he had consulted with his counsel, and that they had advised him that the lease would not prevent Cleveland or any other judgment creditor from getting possession *possession* of the road, except they fixed up a judgment of some kind in his (Chamberlain's) favor, and then (as Mr. Kilbourn then to ldme) the company confessed the judgment to Chamberlain, without knowing how much they owed him, to cover whatever it was when they found out. They had not then got their estimate, but that he had not at the time any idea that the company owed Chamberlain any such amount as the judgment."

In this statement Mr. Cleveland's mind was in a singular state of confusion. He represents me as stating to him that Mr. Chamberlain went into the country, and after two days returned, made certain communications to me of insufficiency of lien under his lease, &c. The fact was that Mr. Cleveland told me that he had understood such to be the fact, and asked me if it were not so. This is not very material except as showing the *animus* of his testimony on that occasion, and may explain the material error into which he falls in the latter part of his statement. I never stated to him "that the company confessed the judgment to Chamberlain without knowing how much they owed him." The amount had been ascertained before the judgment was confessed, and I so stated to Mr. Cleveland clearly and distinctly, in the conversation to which he alludes. He evidently got confused in his mind the statement to that effect in reference to the lease, and applied it to the judgment.

The foregoing questions and answers are objected to by Mr. Emmons, because Mr. Chamberlain is not connected with the motives of the company, nor affected with notice thereof.

Question. Was Mr. Cleveland's claim included among those impending in view of the board? (Objected to.)

Answer. It was, I think, in common with others. No such exclusiveness, however, was given to it as Mr. Cleveland states in his tes-
638 timony before the investigating committee. I don't think Cleveland's impending judgment had any particular influence at that time. I can't answer for the rest of the board. The New York reasons had much the most influence on my own mind. I can't say that the matter was hastened by the pending claim of Cleveland. I don't know that it was. It was rather a hurrying time with us; other matters were pressing. I was only temporarily here, and in a hurry to get back to New York. My present impression is that Mr. Chamberlain first suggested the judgment to me. It was founded on the opinion of his own counsel. It had particular reference to the iron which Vose, Livingston & Co. were endeavoring to reclaim, he

understood. I had simply one idea—to secure the road. I wanted first to secure the completion of the road; second, to protect the Wisconsin stockholders. These were the paramount considerations in my mind. Next my desire was to secure Mr. Chamberlain. This is the order of motives in my mind. I supposed Mr. Chamberlain's would be classed differently. He wanted, I suppose, first to secure himself. In order to secure these objects, I deemed it certainly necessary to have the lease and the judgment before Cleveland should get a judgment. Doubtless I explained my general views to the board. How far I mentioned them in detail I can't say. I can't say precisely what motives may have influenced them. Mr. Cleveland's claim may have been mentioned in the conversations between him (Chamberlain) and me. There were some attachments then, and there was fear of more attachments every day. They would have hastened our operations without Mr. Cleveland's claim. Mr. Cleveland's claim may have been spoken of between me and Mr. Chamberlain, but not in the way Mr. Cleveland has stated, or I should have remembered it, for I would not then have admitted to anybody that these motives influenced us to make the lease and confess the judgment. No such view was presented between us. The iron was to be devoted to the use of the road, and Mr. Chamberlain was to have the use of the road to secure him. The lease shows all this. There was nothing said between Chamberlain and me, I think, as to whether the iron was to be sold for his benefit, or laid on the road. I understood the agreement to be that the iron was to be laid on the road, and secured to the road for that purpose. This I understood was previously provided for in the lease. This was the scope and object of the arrangement with Chamberlain, I understood. I don't remember by whom the first lease was drawn—I presume by Mr. Stevens or Mr. Palmer. Mr. Chamberlain did not tell me, after the execution of the lease, whether he was satisfied. I suppose he thought it was sufficient. I don't think he stated to me what attorney advised him that a judgment was necessary. It was within a short time—two or three days—after the lease was executed, that the judgment was entered; the lease was executed within a month after I heard of it. Mr. Chamberlain proposed a lease by way of security, or to have control of the road—to have the revenues of the road under his control. This he wanted before the fourth of September, when I went to New York. He wanted a mortgage on the revenues of the road—possession of them, or a lien of them—until he should get his pay. After my return the papers were executed as soon as
639 they could be made without any delay; in two or three days, I presume. I think we directed Mr. Woodward to make an estimate of the amount due Chamberlain before the lease was made, but that he had not had time to make it when the lease was made, as far as the lease was concerned. I considered the amount of indebtedness of no consequence, and I think nothing had then been said about a judgment. Other members of the board may have spoken about a judgment. I speak only of what I know myself. Most of the conversations I think were between other members of the board and Mr. Chamberlain. I was away a good deal, and he was in constant intercourse with other members of the board. Most of my impressions may be rather the results of conferences than of any conversations held by me. I have been an engineer, and practically acquainted with railroads.

Question. How long would it take a chief engineer to make the surveys and estimates necessary to determine the amount of the work that was settled by the judgment to Chamberlain? (Withdrawn.)

I left the business at home in the hands of Messrs. Goodrich & Kneeland. I was also from home a good deal, and attended to the business away from home mostly.

Question. Do you know, or have you any grounds for belief, and, if so, what are such grounds, that Mr. Goodrich or Mr. Kneeland, or any other director of the company, had any interest in any contract between Mr. Chamberlain and the company, or in the profits or proceeds of any contract?

(Objected to as incompetent; secondly, that it calls for incompetent evidence; thirdly, that it calls for immaterial and irrelevant evidence; fourthly, that it is a supremely impudent question for the complainant in this suit to put in the mouth of his counsel.)

I have no knowledge of any such interest, and I have no grounds for believing that any such interest exists.

Cross-examined by Mr. Emmons.

Question. In what you have stated to be your motives in making the lease (so called) and the confession of the judgment, was Mr. Chamberlain anywise privy thereto, to your knowledge, any further than an effort or a manifested design on his part to secure a *bona fide* debt due to him from the railroad company?

Answer. I don't think that I explained to him my motives; nor do I think there was any such explanation of motives between him and the company in discussing the matter of those securities; in other words, I do not think our motives were in any way made an element of the arrangement. So far as anything was said to me by Mr. Chamberlain, it was evident that his motive was to secure payment for the debts due and accruing to him by the company; I allude to the term "accruing indebtedness" only to what is expressed in the lease. The judgment was for a specific amount then due. I don't remember on what day the lease was executed. The chief engineer made a report of the amount due to Mr. Chamberlain, on which the board acted. I presume he had made monthly estimates. I never had anything to do with those. The amount reported due was the basis on which
640 the judgment was confessed. So far as I know, the amount reported was correct. If I had not supposed so, I would have been the last to sanction the arrangement. The estimate was carried to the credit of Mr. Chamberlain, and a balance struck by a deduction of previous payments, and the amount due to Mr. Chamberlain thus ascertained from our books.

Re-examined.

The usage is for each assistant on each portion of the line to make up his monthly statement or estimate. I don't know whether the amount found due to Chamberlain, and for which judgment was entered, exceeded the aggregate of the previous estimates, deducting therefrom the amount previously paid. The leading object with me and, so far as I know, with the other directors was the completion of the road. The understanding, so far as I know, was that the contract between the company and Chamberlain was not abrogated by the lease. The judgment was not in derogation of the lease, but to carry out the objects of the lease.

Question. Was there any understanding at the time that Mr. Chamberlain proposed that the judgment should be given to him, that it should be used in any way inconsistent with the completion of the road?

Answer. No. I had heard, prior to the conversation between Mr. Chamberlain and me, two months prior, that Vose, Livingston & Co. were going to attempt to reclaim the iron. I heard it in our office in New York. I think the commencement of that agitation was as early as the beginning of August; I don't know but sooner. Probably Mr. Chamberlain's object in proposing the judgment was not only to protect him against Vose, Ludington & Co., but also against Cleveland's claim.

Question. Will you state whether, by virtue of the prior contract with Mr. Chamberlain, he, upon the work being stopped, was entitled to any damages, and whether the change in the contract and the allowance of $200,000 was in good faith or a violation of the preceding right of the parties?

(Objected to by Mr. Emmons as irrelevant and immaterial; also, because the counsel for the complainant is trying to borrow a legal opinion from the witness.)

Answer. The allowance, so far as the board was concerned, I have no doubt was made in good faith; whether it was in violation of the right of the parties under the contract I am not able to state. He asked us $300,000 and we offered him $150,000, in consideration of his services in running the road and managing it, for which it was not expected that he would charge anything. It was, after considerable discussion, resolved to give him $200,000. With that he was not satisfied. He claimed that the company had no right under the contract to suspend the work unless they had previously complied with the contract on their part, by paying up all the amounts due on it. I desire to correct the report of my testimony in this: When I answered that I deemed it necessary to have the lease and judgment before Cleveland should get a judgment, I added, in connection and by way of qualification, that I did not then expect that Cleveland
641 was going to get a judgment, and that I had been assured by my counsel before then, and I was then and afterwards assured, that Cleveland would not get a judgment against us of any consequence, and that we should probably get a judgment against him. I think that my answer, as taken down, does not convey correctly the impression that it made or was intended to make.

Further examined by the complainant's counsel.

We did not have specific reference to Mr. Cleveland's suit in the dispositions we made. That was included among the other debts.

Cross-examined.

I mean *the company* by "Co."

Re-examined.

In our conversation with Chamberlain the principal matter talked of was his security. It was also mentioned and understood that he should go on with the work.

Question. Did not Chamberlain know at the time of this lease and judgment, that your motives in part was to guard against the dangers you have spoken of, to protect the interests of the company, insure the completion of the road?

(Objected to.)

Answer. I don't think I explained to Mr. Chamberlain anything about my motives in that respect. The subject discussed between him and me was the security for his benefit.

Question. At the time of this lease and judgment did not Chamberlain know that the Cleveland suit was on trial?

Answer. I don't know. I don't know myself that the suit was then on trial. I don't know whether I then knew it at the time the lease was made. I don't think he urged that matter as a motive. In connection with the negotiations between Chamberlain and us, in regard to giving him these securities, I don't think the Cleveland matter was specially mentioned, but I dare say that was mentioned in connection with other matters.

BYRON KILBOURN.

FRIDAY, 28*th May*, 1858.

Benjamin H. Edgerton, being duly sworn on the part of the complainant, says:

I am a civil engineer. I have been one over twenty years. I have been engaged on the Mississippi road since it was started, about nine years. I have been engaged almost wholly in Wisconsin. I have become familiar with the surface of that part of the country which I have been over. I have seen a considerable portion of the State. I have been over part of the La Crosse rout last winter. We left here about the seventh day of December last, and were on the rout until the sixteenth or seventeenth.

Question. Did you make any observation as to the ballasting between Beaver Dam and Portage?

(Objected to.)

642 Answer. We made only casual observations. We had no time to make accurate measurements. From Fox Lake we went on foot to Beaver Dam, seven miles, and the rest of the way to Portage our observations were made from the cars. The distance from Beaver Dam to Portage is about thirty-four miles. I think I have not the minutes we made; I think Mr. Marshall took them.

B. H. EDGERTON.

Charles E. Jenkins, being duly sworn on the part of the complainant, says:

I was a director in the La Crosse road from some time in April, 1857, until some time in October, 1857. When in town, I generally attended the meetings of the board, when notified. I recollect that a contract was made by the road with Mr. Chamberlain in January, 1857.

Question. Will you state what you know on the subject of the negotiation of that contract, the parties with whom it was negotiated, and its adoption by the board?

(Objected to.)

Answer. I don't know with whom the contract was negotiated on the part of the board. I was one of the executive committee, but had nothing to do with the negotiation. I think the matter was reported to the board for their action. I think Mr. Kilbourn was one of the most active men in pressing it on the board; I am not sure.

Question. Do you know who were the parties in interest in that contract with Mr. Chamberlain; and if you do not know, do you know any facts indicating who were? And if so, state them.

(Objected to by Mr. Emmons.)

Answer. I do not know who were the parties interested (if any) with Mr. Chamberlain in that contract. I have no knowledge of any facts indicating who were interested. I have suspicions on the subject, which have arisen rather from my knowledge of the men than from any knowledge of facts.

(The last answer specifically objected to by Mr. Emmons.)

I was a member of the board, but not present when the lease was given to Mr. Chamberlain. I had a conversation with Mr. Chamberlain previous to that time.

Question. What motives or reasons were spoken of (if any) for giving the lease?

Answer. To secure Mr. Chamberlain for moneys expended on the contract.

Question. What other motives were assigned?

Answer. The general reason was this: The affairs of the company were getting very much embarrassed, and there was a large amount due to Mr.

Chamberlain, and he desired to be secured, and proposed to be secured by taking a lease of the road, to which I assented. On reflection, for reasons which I need not detail here, I determined not to attend the meeting of the board held for that purpose, and did not attend.

Question. Was any allusion made by Chamberlain to the suit of Cleveland and the other liabilities of the company?

643 Answer. There was a general reference to the fact that the company was embarrassed, but I remember no allusion to any specific claim. At that time we did not think much of Cleveland's claim. This was some time before the lease was given; I think before Kilbourn came home from New York.

Question. Was not that—the embarrassment of the company—assigned as a reason why the lease should be given?

Answer. Yes.

Question. Was anything said as to the protection the company would receive from the lease, or the interest it had in giving the lease, or about the company having the road completed?

Answer. I think not. My conversation with him was brief.

Question. Who were the principal controllers of the affairs of the company at that time?

Answer. Kilbourn was the chief man. To all intents and purposes, I regarded him as the company; Mr. Kneeland and Mr. Goodrich were next, and were about on a par.

Question. Were you present at the time the authority to confess the judgment was given by the board?

Answer. I was.

Question. Will you state the motives and objects of confessing that judgment, as urged at that time?

Answer. The only object I knew of was to secure Mr. Chamberlain.

Question. Was anything said at the time about protecting the iron by means of the judgment?

Answer. I am not positive, but I think there was. I think the object of the judgment was to give Mr. Chamberlain the first lien on the road and its property, subject, of course, to the first mortgage.

Question. Was it not then understood that Mr. Chamberlain was going forward in the completion of the road?

Answer. I think it was.

Question. Was it not the understanding that Chamberlain should use the judgment to protect the iron from the claims of other creditors, so as to secure it to be laid down on the road?

Answer. I have no recollection of any such object being stated.

Question. Did he not take the lease as security?

Answer. I remember stating to Mr. Chamberlain myself that I thought the lease was insufficient; that I thought he also ought to have a judgment as security. I was desirous to see him secured beyond a contingency. I presume his counsel had suggested it to him before.

Question. Was not one reason why you preferred to secure Mr. Chamberlain above all other creditors, because that would secure the completion of the road?

Answer. That was one reason with me personally. Besides, I thought that he had the best claim to be secured. I felt personally very friendly to him, and desired to see him secured.

Question. Was the amount for which the judgment was given actually due to Mr. Chamberlain when it was entered?

Answer. That I don't know.

644 Question. Prior to that time, and in the month of September, had the officers of the company stated any other amount as due to Mr. Chamlain; and if so, what amount?

Answer. The only knowledge I have on that subject is derived from hearsay.

Question. At the time of the conversation, prior to giving the lease, was any sum stated by him as due to him?

Answer. I think not.

Question. How did the board arrive at the amount for which judgment should be entered?

Answer. From estimates and statements submitted by the chief engineer, and, I think, by the secretary or by Mr. Goodrich. A paper was brought in at the meeting of the board containing some figures and the sum total of the amount due to Mr. Chamberlain.

Question. Was there any particular examination of the items of that account?

Answer. I made none. I did not see any except by Mr. Kilbourn and Mr. Goodrich, who made some examination of the statement. I knew nothing about the matter any way. I remember Mr. Kilbourn expressing some surprise at the amount exceeding his anticipations, and he and Mr. Goodrich examined that paper. They did not examine any other papers or vouchers that I know of. They might have done so.

Question. Was there any understanding at the time, that this was only a settlement for the time being, and that the true amount should be afterwards adjusted?

Answer. No; Mr. Chamberlain claimed this sum to be due to him. There was a bonus allowed him for something which it was proposed to include in this judgment, but he would not consent for fear it might invalidate it.

Question. Was Mr. Chamberlain present at that meeting?

Answer. Part of the time; I think not all. The amount of the bonus was large, I think $200,000, but I am not sure. Mr. Chamberlain objected to have that go into the judgment; he said he wanted the judgment for the amount due him.

Question. What reason did he give for a doubt as to the safety of including the $200,000 bonus?

Answer. I don't remember what the bonus was for. A portion of it was for something to be done thereafter, I think. A doubt was expressed by somebody—Mr. Chamberlain, or perhaps myself—whether the judgment would be valid if anything more was included in it than the amount actually due. The judgment was not included because the board and Mr. Chamberlain desired that the judgment should be valid in all respects.

Question. Was the board unwilling to include it, or Mr. Chamberlain unwilling to receive it?

Answer. He was unwilling to receive it. I think the board was willing to include it. I, personally, was not; Mr. Palmer, I think, concurred with me. Mr. Kneeland was not present. No vote was taken on the question, and I don't know how the majority stood.

645 Question. Were any other objections urged to it than it invalidating the judgment?

Answer. I don't remember any other grounds.

Question. Was Mr. Samuel Brown present at the meeting?

Answer. Yes; Mr. Brown and Mr. Vliet were both present.

Question. Did you know that Mr. Chamberlain had received $200,000 in bonds, or was anything said at that meeting about his having received it?

Answer. No.

Question. Were any parties besides Mr. Chamberlain interested in that bonus, except himself?

Answer. I have no knowledge or information on that subject.

Question. Do you know any facts tending to show such an interest?

Answer. I can't say that I do. I know of no fact which would go to establish that any director of the board was interested with Mr. Chamberlain in that judgment or the bonus talked of at the time.

Question. Do you know of any director of that board having received, directly or indirectly, from Mr. Chamberlain, or any other person, any consideration whatever for any matters growing out of the Chamberlain contract with the road?

Answer. I do not.

Cross-examined by Mr. Emmons.

On reflection, I can state what the bonus was for. The consideration of it was as expressed in clause four of the contract made by the company and Mr. Chamberlain, dated twenty-sixth of September, 1857. I think that the objection to including that $200,000 in the judgment came from Mr. Palmer, and that the reason why it was not included in the judgment was that the bonus included prospective damages as well as past.

I could have answered more clearly on this point had I then read the contract, which I have since looked at. I mean the contract contemporaneous with the lease.

Re-examined.

Question. At the time the lease was given, were there seven directors in Milwaukee without you?

(Objected to.)

Answer. I don't know.

Question. At the time the confession of judgment was given, were the seven directors present?

(Objected to by Mr. Emmons, but not by Mr. Palmer.)

Answer. Yes; I feel positive in my own recollection that but seven were present.

CHARLES E. JENKINS.

Edwin H. Goodrich, being duly sworn as a witness on behalf of complainant, testifies and says:

I have been a director of the La Crosse road since it was incor-
646 porated, up to the first day of April last. I recollect the fact of Mr. Chamberlain's contract in January, 1857. I was then a member of the executive committee, and remained so until about October, 1857.

Question. Did you, as one of the executive committee, take part in letting the contract to Mr. Chamberlain?

Answer. I did as a member of the board, or of the committee. I don't know whether the board or the committee let the contract.

Question. Are you aware that since then there have been various modifications of that contract?

Answer. I am.

Question. Have you at any time, directly or indirectly, had any interest in or expectation of benefit from any contract or modification of a contract, or arrangement, or agreement, or understanding between the La Crosse and Milwaukee Railroad Company and Mr. Chamberlain?

Answer. I have not.

Question. Have you at any time received any money, property, right of action, or other valuable thing from Mr. Chamberlain, or from any other person acting for Mr. Chamberlain?

Answer. Yes; I have.

Question. For what?

Answer. As a salary for my services in managing the La Crosse and Milwaukee railroad since the execution of the lease.

Question. Have you never received anything else?

Answer. I have not.

Question. Have you any promise or agreement for anything (further than this salary) legal or honorary?

Answer. I have not.

Question. You have answered to the third recorded question that you have no interest, and have had no interest, and no expectation of interest in such contract, agreement, or understanding. I now ask you if any member of your family, any relation, or any person for you, has any such interest or expectation?

Answer. Not to my knowledge.

Question. Do you know, either from conversation with Chamberlain, or with any other director, or from any other source, whether or not any person besides Mr. Chamberlain is interested in the contract made by him with the La Crosse and Milwaukee Railroad Company?

(Objected to by Mr. Emmons, so far as relates to conversation with others than Mr. Chamberlain.)

Answer. I know by common report that Daniel L. Wells is interested in the contract. I don't know of any other person.

Question. Have you yourself, or do you know of any other person besides Mr. Chamberlain who has or has had any interest, direct or indirect, any hope of reward, or expectation of benefit growing out of the contract or modification of contract of Mr. Chamberlain with the La Crosse and Milwaukee Railroad Company, or growing out of the profits, or moneys, or bonds, or stocks to arise out of, or to be received in consequence of the contract, either by virtue of any arrangement, understanding, or agreement, express or implied, either with Daniel L. Wells or with Mr. Chamberlain?

647 Answer. I do not.

Question. Were you a member of the board at the time the judgment was confessed?

Answer. I was.

Question. How many directors were present at that meeting? Were their names recorded, and who were they?

Answer. I think there were eight. I don't know whether their names were recorded. They were Vliet, Brown, Palmer, Strong, Jenkins, Hadley, Kilbourn, and myself. That is my recollection.

Question. At the time of giving the lease (so called) how many directors were present and voting on that proposition?

Answer. I can't answer that question. I was present. I can't recollect the names of those present.

Question. Do you recollect the time of the giving of the judgment?

Answer. I do.

Question. When did you commence acting under Mr. Chamberlain and receiving a salary as you have stated?

Answer. On the first day of October last.

Question. What salary do you receive?

Answer. Three thousand dollars.

Question. When did you make that arrangement with Mr. Chamberlain?

Answer. I never exchanged a word with him on that subject. I fixed it

myself. I fixed the salary of all the men on the road, and thought if I did that I was competent to fix my own. It was credited to me on the books.

Question. Who asked you to remain there under him as the superintendent?

Answer. I don't know that any one did.

Question. Had you, prior to that time, been acting as superintendent in behalf of the company, employing the men, &c.?

Answer. I had.

Question. Then did you continue subsequently discharging the same duties?

Answer. I did.

Question. Without any agreement or understanding to that effect between you and Mr. Chamberlain?

Answer. No; I did not continue without such understanding.

Question. When did you first have this understanding with him that you should so continue?

Answer. On the first day of October.

Question. Did you have any talk with him on the subject before that?

Answer. I did not.

Question. Prior to that time (October 1, 1858) did you not have an arrangement with him, Mr. Chamberlain, by which you were to have five thousand dollars a year? Have you not so stated?

Answer. I never have.

Question. At the time he requested you to continue in the superintendence of the road what did he say to you?

648 Answer. He did not request me. I did not say he did. I said there was an arrangement.

Question. What was the arrangement?

Answer. I said to him that I would like to continue in the management of the road. He said I could do so for the present. That is all that ever passed between us then or before or since on the subject. I suppose I am like any other employee on a railroad—there during good behaviour.

Question. Was the supplement—the indorsement on the contract of the thirtieth of April—made by you or by the executive committee?

Answer. It was made by the executive committee.

Question. Which members of the executive committee assented to it?

Answer. Garrett Vliet, Moses Kneeland, and myself. The chief engineer was also present.

Cross-examined.

That modification of the contract was signed on the day on which it bears date. I don't recollect whether that action of the committee was confirmed by the board. They recognized it and acted upon it. The chief engineer made estimates on it, and payments were made on it. No work had been done on that tunnel until after the date of the contract, the thirtieth day of April. The engineer made monthly estimates. I can recollect who were at the meeting when the judgment was confessed, and not who were present when the lease was executed, because the judgment was entered, and it was authorized after the first of October; and I wanted to be excused from acting at that meeting of the board in this matter, on account of my relations with Chamberlain, having been then employed by him as I have stated.

EDWIN H. GOODRICH.

FRIDAY, 23*d July*, 1858.

Thomas E. Peverley, sworn for the complainant, says:

I am a civil engineer; I have been one for ten or eleven years. I have

been on railroad work most of the time when I have been doing anything. Mr. Marshall and I were partners as civil engineers last fall and winter. He and Mr. Edgerton and myself have made surveys over the La Crosse railroad together at the request of Mr. Cleveland. It was in the latter part of November or the first part of December. We made minutes of the results of our survey as we went along. I kept the minutes of the survey of that part of the road that I went over. Those contained the results of my own work. Mr. Marshall had a separate book. I don't know whether Mr. Edgerton also kept a book or not. I was only with them one day and part of another. I figured up in my book the result contained in it, and I think we all figured together. I put down the number of yards that I measured. Mr. Marshall and I went once with Mr. Cleveland, without Mr. Edgerton. We kept a book then. I don't know who has it; I have not got it. I have since that time removed from Milwaukee to Chicago. I did not take that book with me. The last time I saw my book of miuutes was about
649 the middle of December. I did not take it with me to Chicago. The last I knew of it it was here in the office, in our office. I had a conversation with Mr. Cleveland about those minutes when he came down to subpœna me. I did not tell him that I had given them to somebody to keep for me. I told him I did not know where they were. I did not tell him he could not have those minutes until he paid me for my work. I have not the remotest idea where that book is. I have not seen it since I left here last spring, and not since last winter that I know of. I threw it down on a table in my office, where it lay with half a dozen others looking like it. I have not seen it since then that I know of.

Question. Did you examine the ballasting from Hartford to Fox Lake, and from Fox Lake to Portage, or any portion of it on the road, with a view to see how much ballasting had been done?

(Objected to by counsel for Mr. Chamberlain, as irrelevant, and as improper, because the testimony designed to follow it, as stated by complainant's counsel, is incompetent.)

Answer. I think we did. It was the upper end of the road. I don't recollect the names of the towns. It was at Fox Lake and on both sides of it. We examined the ballasting west from Portage. I think as far as the iron was then laid. I can't now undertake to say what amount of ballasting had been done west of Portage. I did not have a copy of the engineer's report filed in this case as part of an answer. I saw such a copy.

Question. How did the amount of ballasting done compare with the statement in the copy?

(Objected to by Mr. Chamberlain's counsel, for the reason before given, and because it does not appear that the witness ever saw the original on file, or knows this to be a true copy.)

Answer. I don't recollect. I don't know what Mr. Cleveland's object was in having those surveys made. I suppose it was to procure testimony to be used in this case. I did not inform Mr. Cleveland that my memory was so bad that I could not afterwards recollect the results. Mr. Cleveland paid us a hundred and fifty dollars for our work. This affidavit now shown to me (being one filed in the cause December 19, 1857) was made by me among others.

Question. Is that affidavit true?

(Objected to, as irrelevant and immaterial.)

Answer. It is; I see what is stated here. I can't say anything more than is stated here. I can't undertake to prove what is stated here. I have no memory on the subject independent of what is stated here. When this affidavit was made out it was made out correctly. I could not remember without this. This says one third of the ballasting was done on the ten miles

next east of Kilbourn City. I can't tell without this. I should take this word for word. We did the work in the early part of December. This affidavit was made immediately after we returned. No ballasting was done west of Kilbourn City. It says here (in the affidavit) from a point seven miles west of Portage to Portage, and from Kilbourn City six miles west. The track is ballasted as far as is needed, but the material to ballast was obtained on the same section. The amount of ballasting on the ten miles first spoken of did not exceed eighteen thousand cubic yards, it says in the affidavit. West of Portage no ballasting was done, except what I have stated, so I find in the affidavit. It was our opinion at the time, I suppose, that not over one hundred thousand yards of ballasting was done between Beaver Dam and Portage City. We went over the road to make an estimate of this. We rode part way, and walked part way. I don't remember the town where we got out to walk. I think it was Fox Lake.

Question. What is a fair price for the ballasting on the division from Portage City to Beaver Dam? What was at that time?

(Objected to as irrelevant and immaterial.)

Answer. I suppose twenty-five or thirty cents: we then estimated it at twenty cents; I should think that was a fair estimate, but there are a thousand things to be taken into account. I think we examined the embankment at Fox Lake. It is put down here at fifteen thousand cubic yards, unless there has been a material settling. I thought at the time that twenty cents was a fair price per cubic yard. I won't undertake, from anything outside of this, from mere memory, to change anything in this affidavit. We examined the solid rock from Portage City to Lisbon; does not exceed twenty-one thousand and thirty-nine cubic yards. The loose rock does not exceed fifty-three thousand six hundred and thirty-two cubic yards. The grading from Portage City to Lisbon would not exceed fifteen thousand cubic yards per mile. Beyond New Lisbon about three miles and a half of grading was done, which would average not over five thousand cubic yards to a mile. I was up at the tunnel once before; I was not there with Marshall and Edgerton the second time. On the west side of the tunnel the rock excavation was hard down at eight thousand five hundred and three yards. I did not measure either side of the tunnel approaches. Marshall and Edgerton measured them. There was not to exceed one mile and thirty-six hundredths of side track west of the tunnel, where part of these measurements were made. I did not make them all myself. There are only two cattle guards, made of fine railroad ties, and two by four strips laid across the top. The entire lumber, board measure, in the two would be about one hundred feet. Ten dollars for the two would be a full price; so it says in the affidavit. There was one highway bridge over the track, composed of about fifteen thousand feet of lumber, board measure, and worth in labor and materials about four hundred dollars. There are two under passages, costing in labor and materials about one hundred eighty-seven dollars each, and one arched passage-way, containing about eleven hundred yards of masonry, which would fairly cost about forty-four hundred dollars. All the other crossings would not exceed fifty dollars. There were bank walls only in three places, amounting in the aggregate only to three hundred and twenty cubic yards, which, at three dollars per yard, amounts to nine hundred sixty dollars. The entire extra haul, beyond five hundred feet, between Portage City and the tunnel, was thirty-four thousand three hundred and fifty yards, for distances varying from one hundred to two thousand feet, amounting, at the contract price, to 2,353. Between Portage City and the tunnel, aside from the forty-six miles graded, the grubbing and clearing does not exceed one

mile. I was over the road beyond the tunnel; it says here does not
651 exceed twelve miles and a half. I have nothing to say to change this in any way. This is as near as I can now recollect the true state of facts. I don't recollect anything more than that I gave the minits in at that time. I can't, from memory alone, now say that this is true; nor can I add to it nor take from it. Between Lisbon and La Crosse the whole amount of excavation, exclusive of the tunnel approaches, does not exceed seventy-eight thousand eight hundred and thirty-five yards of earth, and ten hundred and eighty-six yards of rock. There are 110½ yards of bridge masonry, and ten yards of culvert paving, and an extra haul of 6,432 yards, amounting, (for the haul,) at the contract prices, to $169 69; also 432 feet of timber, worth about one hundred and eight dollars. There are also 107 yards of culvert masonry; also thirty yards of stone delivered for culverts. That constituted all the work west of New Lisbon. I went over this with the honest desire of ascertaining the entire amount of work done. I gave in certain sums at the time I made this affidavit. I swore then to the sums I believed correct.

Question Do you now believe those sums to be correct?

Answer. I have no reason to suppose otherwise. I have not received from the defendants, or any or either of them, any money or valuable thing whatever, or the promise of it.

Cross-examined by defendant's (Chamberlain's) counsel.

I do not know who all the defendants are. I do not know any of them, that I know of. I know Mr. Chamberlain by sight only. I never spoke to him in my life. I do not know Mr. Kneeland or Mr. Luddington even by sight. I do not know Mr. Kilbourn, and never saw him that I know of.

I was engaged the first time three days in making examination. We were engaged in all, in both examinations, about two weeks, I think, including the time spent in going and returning. In my testimony to-day, as to quantities and amounts, I do not speak from present recollection. I have only read from the documents, which I once signed, the amounts there mentioned, which, at the time I signed the paper, I believed to be correct, and I know nothing to the contrary now. I do not pretend to speak from any present recollection of the matters. We arrived at the quantities of embankment, excavation, and ballasting, by measuring, sometimes from the bank and sometimes from the borrowing pits. It is hard for me now to recollect the number of miles we examined in all, as it was in scattered pieces. The second time I went through with Mr. Cleveland we began (Mr. Cleveland and I) west of Sparta. I worked towards La Crosse first; when we had got that done we came back and worked this way from the point west of Sparta where we had begun. We had a team and sometimes rode, sometimes walked. We walked as we measured, and we rode from point to point where work had been done. We followed the public road. We could see where the work was done. The railroad was not all the way in sight of the public road. We inquired to ascertain wherever work was done. We made inquiries as to where work was done, and examined
652 wherever we could hear of work being done. We had to inquire of others to ascertain where the line was in places where no work was done. If we were correctly told, then there was little or no work done that we did not see. If we were not correctly informed where the line was, there might have been miles of work done that we did not see. The work was done only in patches, and where no work was done we were compelled to rely on information from others to ascertain the line of the road; but so far as we could ascertain we viewed all the work done. Between Beaver

Dam and Portage we measured only the road-bed and none of the borrowing pits. We did not have the chance to get the results exactly accurate, which we would have if we had had more time. I should be loth to say of results obtained in that time that there was not a yard more or less done on the whole work.

Question. Are you willing to say, as an engineer, that without the original field-notes, you can go on a piece of work like that, and arrive at anything like a correct estimate of the amount of work done? I mean in the time that you had.

Answer. I should say that you could not measure it accurately. The most you could do would be to make an approximate estimate of it. You could make an estimate that you would think would be sufficient to cover the amount; you could not make a perfectly accurate estimate. Where the ground was hard you could at any time get the exact amount of work done, but if part of it had sunk you could not tell anything about it.

Re-examined.

As near as I can recollect, there was a considerable part of the work of such a nature that you could make an approximate estimate of the amount of work done; of part you could not. I intended to put down what I supposed would cover it—the outside figure; it might fall below the amount I named, but it could not, as I then thought, (without having the cross-section,) very well exceed the amount I put down; I mean the cross-section of the original ground, as it was before the work was done; with them I could tell exactly; without them I could only approximate. I could probably estimate an amount sufficient to cover the amount. You could not ascertain the exact surface of the ground originally without the cross-sections. I intended to set the figures high enough.

Question. Was there any rational chance of the amount of work done exceeding the amount given by you?

Answer. I intended to get them high enough. A man might *might* doubt whether they would cover all the work done. It is a hard matter to answer whether the doubt would be rational.

Cross-examined.

The chief engineer, who had charge of the work from the beginning, with all the notes, ought to be able to make a more accurate estimate of the work done on the line of the road than I possibly could; with these notes I could have made an accurate estimate, that I could rely upon. I desire to
653 say for myself that when the affidavit was made I had my note-books with me, and read off the amounts. I do not undertake to say that these figures are or are not the amounts I gave in them; I do not see any changes, and do not know of any; but if there has been any, I do not wish to be responsible for it. These figures in this affidavit are not in my handwriting; my signature to it is in my handwriting. If I had my book I could tell whether these amounts are the same I had then; without it I cannot pretend to tell whether these figures are just the same as they were then.

THOMAS E. PEVERLY.

Hugh McFarlan, being sworn for the plaintiff, says:

I was, last fall, one of the directors of the La Crosse Railroad Company. I remember the fact of the lease being given to Selah Chamberlain. I had

conversation with Mr. Chamberlain about the time the lease was given; it was about the time the lease was made. He said to me at that time, in reply to my question, how much the company owed him, that the company owed him between four and five hundred thousand dollars, he thought, but he could not tell exactly, and he wanted security; I was well satisfied that he got the security which he had by the lease; it is my impression, but I would not be positive on that point, that he said the company would owe him that amount (between $444,000 and $500,000) when the road should be completed to New Lisbon.

Cross-examined by Mr. Chamberlain's counsel.

He had mentioned to me that he ought to have security. He had applied to me, as a director, for the security prior to this conversation. He was uneasy for some time before—for a month or two before—about his security for the company's indebtedness to him.

H. McFARLAN.

MONDAY, 26*th July*, 1858.

Benjamin H. Edgerton, recalled for the complainant, says:

(The complainant's counsel announcing that it was intended to examine this witness upon the same subject-matter and to the same points as are embraced in the examination of the witness Peverly, the counsel for the defendant Chamberlain objects to all such testimony for the reason above stated by him, and the testimony is all taken to such objections.)

Being duly sworn, he testifies: I surveyed and measured, between the seventh and seventeenth of December last, a portion of the work on the La Crosse railroad, between Portage City and the tunnel and at the tunnel and at the tunnel cut; our attention was only called to certain items—the rock excavation, the side tracks, cattle guards, crossings, retaining walls, extra hauls, and the gravelling at Fox Lake, (this side of the tunnel,) the ballasting, clearing, and grubbing. The first measurement we made was at the tunnel. We made 8,593 yards of rock excavation on the west
654 side, and 11,128 yards on the east side, including some cemented sand and gravel reckoned at the same price; we, at least, did not separate them. This estimate of rock excavation includes both the loose and solid rock. There were also 40,242 yards of earth excavation. The tunnel had not been worked at all. These excavations were merely in the approaches. The rock was mostly sand rock, soft, but pretty hard to get out. A good deal of it would require blasting; some of it, I suppose, could be got out with a pick.

Question. What would have been a fair price for that work?

(Objected to by counsel for defendant Chamberlain.)

Answer. I should think it might have been got for seventy-five or eighty cents. I should think a fair price for the earth excavation, per yard, would be about twenty cents.

(Objected to.)

This was all the work done at that time at the tunnel and approaches. We made an estimate of the ballasting from Portage City west; about ten miles of the road from Kilbourn City east had been ballasted. The balance of the way to Portage, and also about six miles from Kilbourn City west, appeared to have been laid upon ballast grade, or the ballast was upon the same sections. This is not usually reckoned as ballast. When the material of the road-bed is suitable for ballast, ballast, of course, is not required. That is pretty much all the ballasting that was done on the road west of Portage City to the tunnel. Some little detached pieces were done, but

they did not amount to much. We called it about one third ballasted from Kilbourn City east ten miles, there being about 18,000 yards.

Question. What was a fair price for that ballasting?

(Objected to.)

Answer. Twenty cents. That is what we paid on the Milwaukee and Mississippi railroad at that time. On the eastern division we called the ballasting (from Beaver Dam to Portage City) 100,000 yards. We did not have time to measure this accurately, but we thought that estimate would cover it. The distance was thirty-four miles; twenty cents would be a fair price for that.

(Objected to.)

We did not make an accurate measurement of this, but I think we put the quantity down high enough. There was an item also in the eastern division for filling in Fox Lake. We measured the embankment there as near as we could, and we made about fifteen thousand yards. Twenty cents would have been a fair price for that. The next item is the solid rock excavation from Portage to New Lisbon, aside from the tunnel and approaches. There is no rock, I think, beyond Swanston. We made of solid rock 21,034 yards, and of loose rock 53,432 yards. There was no work of rock excavation done beyond New Lisbon, except the tunnel approaches. We found but two cattle guards proper; they were near Portage; they were constructed of ties with slats on the top. There might have been one hundred feet of lumber, costing in all, perhaps, ten dollars. Those were all the cattle guards there
655 were on the road west of Portage at that time. There was one highway bridge over the road containing about 15,000 feet of lumber. There were two under crossings constructed of wood and one of masonry, arched. The highway bridge would be worth, at a fair estimate, four hundred dollars. The under crossings of wood we figured at about one hundred and eighty-seven dollars each; we measured the lumber and estimated the labor. The arched culvert we did not measure; we took the quantity as given to us by the mason; he gave it to us as a 1,100 yards, which I presume was correct. I think four dollars a yard ($4,400) would build that culvert. There were a number of crossings on the road west of Portage, but they were common highway crossings, which we did not consider extra; they are usually reckoned as part of the contractor's work. These crossings were about at the gade, and seemed mostly to have been made by the people themselves. There were a few slight embankments and some slight excavations.

B. H. EDGERTON.

Edwin H. Goodrich, recalled for the complainant, says:

Question. Have you ever received, or purchased, or had in your possession, any bonds or other securities which belonged to Mr. Chamberlain, by virtue of his contract with the company, or which had been in his hands, or in which he was in any way interested?

(Objected to by Mr. Chamberlain's counsel.)

Answer. I delivered to him (as secretary of the company) all the securities which he had while I was secretary; I delivered, at his request, some securities to John B. Vliet, and some to Mr. Alden; all the remaining securities issued by him were delivered to him, so far as I now recollect.

Question. Have you ever had any interest, by purchase or otherwise, in any bonds or other securities which had been in Mr. Chamberlain's hands, or which had been issued to him by the La Crosse Railroad Company?

Answer. I have received nothing from him; I am not prepared to answer that question until I have made some inquiries; I do not mean to say that I do recollect or that I do not recollect; I have no further answer to make now.

Question. Do you mean to say that you do not now recollect in regard to the facts inquired into in the last question?

Answer. Yes; I do not now recollect all the circumstances necessary in order to enable me to answer that question.

Question. Do you say that you do not now recollect whether or not you have ever had any interest in securities, such as are described in the question preceding this last one?

Answer. I decline to answer that question at present.

(The commissioner, at Mr. Brown's request, says that the witness should answer the question, and the witness again refuses to answer the question.)

656 *Cross-examined by Mr. Emmons.*

I do not decline utterly to answer the question, but I merely decline to answer at present. I came here to-day on request, without knowing on what matter I was to be examined. My declination is only present and not ultimate. I was subpœnaed to-day at about half-past twelve for two o'clock. Mr. Cleveland told me to-day that he had a subpœna for two o'clock to-day, and took it from his pocket to read to me, when I told him I was in a hurry and could not wait, and I would come. He paid me no fees.

EDWIN H. GOODRICH.

THURSDAY, 27*th July*, 1858.

Benjamin H. Edgerton, recalled for the complainant, says:

We made the whole length of side tracks west of Portage City one mile and 36-100, when we came back. When we went out the side track had not been laid to Manston. This was aside from any side tracks at Portage City, which we assumed to belong to the eastern division, I think there were three or four side tracks at Portage City. I can't tell the length of them.

We made the extra haul west of Portage City 34,350 yards, the distance varying from one hundred to two thousand feet. We figured the expense of the extra haul to the contract price, $2,353. I forget exactly how much we made the average of the distances.

The bank walls were only those that we saw. All we could make out were three hundred and twenty yards in the whole, which we reckoned worth three dollars per yard. There was one bank wall west of Kilbourn City, about two or two and a half miles from Kilbourn City, and two east of Kilbourn City.

There was very little clearing and grubbing done from two or three miles beyond New Lisbon to the tunnel, so far as we saw. We passed over the road as near as we could with a team, and crossed it in different places. When we did not follow it we inquired where work had been done. We inquired at one place whether any grubbing had been done there, and they told us about eighty rods had been done. There were forty-six miles of grading done from Portage City to three miles beyond New Lisbon. I could not tell what proportion of the distance we followed the unfinished part of the road from three miles beyond New Lisbon west. For about three miles this side of the tunnel we passed over the line, seeing the stakes frequently. Between these points we crossed the road, I can't say how many times; I should think three or four times. No work was done that we saw along there. We walked over that part of the road from Portage to the end of the grading, (three miles beyond New Lisbon,) where the continuous grading was done, and measured the work. We made a calculation of the whole cost of the whole amount of work done on the western division at the contract prices. We made a difference between the value of the work done

and the engineer's estimate of it, found in the answer in this suit,
657 which difference was $406,068, including the retained percentage, $477,344. In this calculation we estimated the prices at the contract rates, and the extra items we fixed at what we thought reasonable prices. We assumed that the grading would not exceed 15,000 yards per mile from Portage City to New Lisbon. We thought it would fall below that. Much of the way the grading was light, and we were confident the work would not exceed that. We made no estimate of the amount of earth to be taken out of the cut where the tunnel is. If the western division were divided into three equal sections, I should think the grading would not exceed 20,000 yards per mile on that section, including the tunnel and approaches.

I did not go beyond the tunnel. That section would reach about three miles beyond the tunnel. Unless there was heavier work beyond the tunnel than I supposed, it would not exceed 20,000 yards per mile. When we went out the track was within about one mile of Manston, about thirty-five miles west of Portage; when we returned, it had got beyond Manston some. Where the materials for ballasting are on the same section, it is customary to put it into the road-bed. By ballasting, we understand hauling materials by the train over the road; it is done after the track is laid. The object is to put on better materials than the ground affords, and to imbed the ties in it. I should estimate the whole cost of chairs, spikes, ties, and laying at about $1,500 per mile. I reckon 2,640 ties to the mile, at twenty-five cents apiece, amounting to 660 dollars. There would be about 5,280 pounds of spikes, at five cents a pound. There are about four thousand pounds of chairs to the mile, worth about five cents a pound. Track-laying I reckon at about three hundred and fifty dollars a mile. These are the outside prices at that time.

Cross-examined by Mr. Emmons.

We kept notes on this survey; I did not keep them; one of the party kept them and two measured. We were gone from here ten days. We were about seven days in the examination. We had not access to the original notes. We had the cross sections as they were on the ground most of the way. They were standing until within a short distance of Portage City. I think there were about seven miles of the way from Portage City west, where the slope stakes had not been marked.

I have not had the notes themselves with me in testifying here. I have had the quantities which we made up from those notes at a previous figuring, to the best of my recollection.

I would not state positively that these are the quantities, although I believe they are. They are contained in an affidavit made at that time. I have referred to that in arriving at the quantities. I think the handwriting is mainly Mr. Brown's; I think two or three wrote on it; Mr. Carpenter wrote some, I think. I was present when it was written. I would undertake to give a detailed statement of amounts and quantities, without referring to that affidavit. I remember the distances, but I did not charge my memory with the quantities. My first experience as a railroad engineer was
658 in this State, on the Milwaukee and Mississippi road. It began in 1849, and continued until this time. It has been mainly on that road. I have been engaged on a road in Iowa for the last year and a half. I was not chief engineer on the Milwaukee and Mississippi road; I was constructing engineer. I had charge of the road for a time when there was no chief engineer. I made all of the original surveys of that road, with a few exceptions, from Waukesha to the Mississippi. I did not make those on the Southern Wisconsin, from Janesville to Monroe.

We always keep accurate notes on the original survey. The object of the preliminary survey is to ascertain the best route. The object of the cross-sectioning of the work is to ascertain the amount of work to be done and the cost. I did most of that on the Mississippi road. I had charge of it. The object of cross-sectioning is also to guide the workmen in doing the work. The profile shows the centre line of the road. The quantities are made up from the cross-sections. I have had six or seven assistant engineers at a time on the road. The number depends on the amount of work on hand. We usually have one for every twelve to twenty miles. It is one hundred and seventy-two miles from Waukesha to the Mississippi. Some of the country is level, and some pretty rough. The great majority of it is pretty level.

We were employed about the road for a year, more or less. A man with sufficient help may cross-section in a day three miles, or perhaps not a half or even a quarter of a mile. It depends on the nature of the work. We could do three miles of level country, even surface. Cross-sections are made every hundred feet, and sometimes more frequently. They were one hundred feet apart, on the La Crosse road. I think we had the benefit of the cross-sections all the way but seven miles. We examined forty-six miles of road graded. We did not examine every one of these cross-sections; there was no occasion for it.

We did not attempt to ascertain the exact amount of grading done. Where there was any extra haul or rock work done we examined all the cross-sections.

We determined whether there was extra haul by the stations. There were cases where it was apparent by simple inspection that there could not be any extra haul—cases where the material had been wasted.

I only went to the tunnel. Peverly, Mr. Marshall, and a young man, his assistant, named Clark, I think, were with me. From Portage to the tunnel we rode. Then we rode back from a mile this side of the tunnel to the other end of the embankment. We surveyed on our way back. The commencement of the continuous grade was about twenty miles this side of the tunnel. From there we walked back to Portage, forty-six miles. The whole distance was sixty-six miles. We were about ten or twelve hours going from Portage City to the tunnel. We went on the train to Manston, nearly. The most we did in one day of the forty-six miles was about fourteen miles. In one day we walked nineteen miles, but part of the work we had done the day before; part we did the next day. We were four days in going over
659 this forty-six miles. At Fox Lake we measured the length of the embankment and the depth as near as we could arrive at it. We saw in one place where the new material had been placed on the different kind of material. There was water there. Where we saw the embankment it was resting on a material that had been previously filled in, as we learned upon inquiry. I have had experience on sink holes.

We cannot, in such a case, make an estimate of the amount of the material which has gone into a sink hole by a simple inspection.

We should have to go to the borrowing pit, or bore into the embankment, to ascertain the amount of material put in. Usually a sink hole that has been filled shows evidence of its being a sink hole by the appearance of the earth about it. We did not bore or go to the borrowing pit. From the tunnel to the embankment we followed the line of the road as near as we could with a team. We laid the stakes on the line. They were a hundred feet apart. In one or two cases we saw some ties piled up where we did not see the stakes. Our data for the estimate we made of the value of the whole work done were our estimates of the work done and our prices. I only know the work done beyond the tunnel approaches from Mr. Peverly's

statement. We were a little over half a day engaged in the survey at the tunnel and of the tunnel approaches. This was in December. The weather was not very cold. It snowed three or four inches in the night that we were at the tunnel house. There was that amount of snow on the ground when we were at the tunnel. That amount was very little obstruction to our survey. The banks were very nearly perpendicular, and there was very little snow on the sides.

We call loose rock excavation any ledge that can be taken out without blasting. To the best of my recollection the tunnel approaches at the west side were, at the top of the cut in the widest part, about seventy feet across. We could tell pretty nearly by the appearance of the sides what was solid rock and what was loose rock. I never saw the work about there until I was there upon this occasion. We arrived at the amount of bank wall by measuring the length, breadth, height, and thickness as near as we could ascertain the latter. I could not now state where those bank walls are more precisely than I have. One, I remember, was in sight of Newport, near where a switch went off into the bank.

We assumed the thickness of the walls. The ends of the walls were visable, so that we could measure the length. There was one place where the tunnel culvert is where there might have been a bank wall which had fallen out. There was very little appearance of any, and we did not estimate any. We walked the track the entire forty-six miles.

Re-examined.

The affidavit referred to in my cross-examination was made by me and others. At the time it was made the quantities in the affidavit were taken from those in our note-book. The quantities were compared with those in the note-book, and they agreed. I think that we followed the line on, or in sight of, it for about six miles between the tunnel and the grading.

660 Three miles (about) were from the tunnel this way, and three miles were from the end of the continuous grading west.

B. H. EDGERTON.

Garret Vliet, being duly sworn for the complainant, says:

I was a member of the board of directors of the La Crosse and Milwaukee Railroad Company in 1856 and 1857. I do not recollect when the contract was let to Mr. Chamberlain for building the western division of that road, nor do I recollect of ever seeing the contract. I think I was not a member of the board in 1855. I was a member of the executive committee of the board in 1857, commencing, I think, in the spring. I do not remember a supplementary contract made with Mr. Chamberlain in April, 1857, in relation to the tunnel or approaches to the tunnel. I do not recollect being present at any meeting of the committee when that contract was agreed upon. It is possible that I might have been there when that contract was made, but it appears to me that I would have recollected it if I had been there. The executive committee met every two or three days. It was composed of Mr. Goodrich, Mr. Kneeland, Samuel Brown, and myself. I do not know whether Mr. Kilbourn was a member or not. He was very seldom with us. I do not know what that supplemental contract is.

Question. Did you ever officially authorize a contract with Mr. Chamberlain for excavating the approaches to the tunnel at two dollars a yard, and the tunnel itself at five dollars a yard?

(Objected to by the counsel for defendant Chamberlain.)

Answer. I do not remember of any such thing.

Question. If you had authorized such a contract during the year 1857, don't you believe you would have recollected it at this time?

(Objected to by defendant Chamberlain's counsel.)

Answer. I think I would remember it. It is possible that such a thing may have occurred, and I not now remember it, but it appears to me not. The executive committee kept records of their meetings; almost always a young man, Mr. Whaling, kept minutes. Those minutes were preserved, and I think are now in the office of the secretary of the company.

Three constituted a quorum of the committee.

Cross-examined by Mr. Emmons.

I generally met with the executive committee. I did not have much to do about the affairs and business of the company; our business was chiefly looking over accounts. Mr. Goodrich generally had the papers prepared, and we presumed they were all right. Mr. Brown and myself lived by there, and attended pretty regularly. We held meetings two or three times a week, and sometimes once a day, when there were many accounts. I think there were five in the company. I don't know how nor where it was provided that three made a quorum. I generally attended the meetings of the committee. I sometimes missed, but not often. It would seem probable,
661 therefore, that I must have been there when this contract was made, but I don't remember anything about it. I remember we allowed accounts for making fence and grading. I do not remember the prices we paid, the amounts, or any of them, or the contractors' names, or any of them. I remember the accounts, because we were in the habit of allowing such accounts. It is possible I may have been there when this contract was made, but it does not seem to me that in so large a matter I would be likely to remember it. I think I have talked with Mr. Chamberlain about the tunnel, and road leading to it. I think I recollect talking with him about the old plan of cutting through the hill. It now seems to me that this must have been after the contract was let. I don't know when the tunnel was agreed upon. I do not remember being present when the tunnel was agreed upon. I think the conversation was at the office where we held our meetings. I do remember talking at the same time about the depth of snow through the country, about board fences, &c., and I think it must have been in cold weather. I do not remember being present when the original contract was made. I have not now a good memory about business matters. I regret very much that it is so poor.

Re-examined.

My age will be seventy years next January.

GARRET VLIET.

Lockwood L. Doty, being duly sworn on the part of the complainant, says:

I am secretary of the La Crosse Railroad Company, and have been since the first of May last. I have the custody of the records of the executive committee. It is my impression that there is a package of papers, indorsed "minutes of the executive committee," in the drawer where the rough minutes of the board are kept. They are in Mr. Whaling's handwriting, and I presume have been copied into the book. There is no other book of record of the committee's proceedings subsequent to seventeenth April, 1857, than this one, that I know of. It was the custom to keep the minutes of the board on loose paper, and copy them afterwards into the record book.

LOCKWOOD L. DOTY.

662 EXHIBIT No. 28.

Recapitulation. S. Chamberlain coupon ac't.

	Amount unpaid on bonds—		
	First mortgage, La C. & M. R. R.....	2,120 00	
	Second " "	600 00	
	Milwaukee City, La C. & M. R. R.....	945 00	
	ditto Milw., Fond du L. & G. Bay.....	525 00	
			4,190 00
1858.			
	Paid as follows—		
Jan'y	4 real estate coupons..... 60	240 00	
1857.			
Sept. 1.	1 Mil. City, Green Bay, & F. du Lac, 35	35 00	
	2 " " " " 17 50	35 00	
	3 Mil. City, issued to La C. & M... 35 00	105 00	
Nov.	1 first mortgage.....	20 00	
			435 00
			3,755 00

Milwaukee City issued to Milwaukee, Fond du Lac and Green Bay R. R. Co.

	87 bonds, 1,000 each.....	87,000 00	
	54 do. 500.....	27,000 00	
			114,000 00
	Interest payable semi-annually.....		3,990 00
1858.			
Mar. 1.	86 coupons on hand, 35.....	3,010 00	
	53 " " 17 50.....	927 50	
	Deficit.....	52 50	52 50
		3,990 00	
663 Sept. 1.	83 coupons, 35 00.....	2,905 00	
	51 " 17 50.....	892 50	
	Deficit.....	192 50	192 50
		3,990 00	
1859.			
Mar. 1.	84 coupons on hand, 35 00.....	2,940 00	
	44 do. 17 50.....	770 00	
	Deficit.....	280 00	280 00
		3,990 00	
			525 00

	8 coupons, 35	280 00	
	14..do	245 00	
		525 00	

Milwaukee city bonds, issued to La Crosse and Milwaukee R. R. Co.

	140 bonds, 1,000		140,000 00
	120 do. 500		60,000 00
			200,000 00
	Interest payable semi-annually		7,000 00
1857.			
May 1.	137 coupons on hand, 35 00	4,795 00	
	114 do. 17 50	1,995 00	
	Deficit	210 00	210 00
		7,000 00	
1857.			
Sept. 1.	139 coupons on hand, 35 00	4,865 00	
	115 " " 17 50	2,012 50	
	Deficit	122 50	122 50
		7,000 00	
1859.			
May 1.	130 coupons, 35 00	4,550 00	
	105 do. 17 50	1,837 50	
	Deficit	612 50	612 50
		7,000 00	
	Deficit on Milw. City bonds		945 00
	14 coupons, 35	490 00	
	26 do. 17 50	455 00	
		$945 00	

664 *La Crosse and Milwaukee second mortgage bonds.*

	One million of dollars, 8 p. c. interest, payable semi-annually		40,000 00
1858.			
Mar. 1.	996 coupons on hand, 40	39,840 00	
	Deficit	160 00	160 00
		40,000, 00	
Sept. 1.	992 coupons on hand	39,680 00	
	Deficit	320 00	320 00
		40,000 00	

1859.			
Mar. 1.	997 coupons on hand	39,880 00	
	Deficit	120 00	120 00
		40,000 00	
			$600 00
	15 coupons short, 40	600 00	

La Crosse and Milwaukee first mortgage bonds.

	Total issue		950,000 00
	Interest payable semi-annually		38,000 00
1858.			
May 1.	500 coupons on hand, 40	20,000 00	
	892 " " 20	17,840 00	
	Deficit	160 00	160 00
		38,000 00	
Nov. 1.	470 coupons on hand, 40	18,800 00	
	907 " " 20	18,140 00	
	Deficit	1,060 00	1,060 00
		38,000 00	
1859.			
May 1.	481 coupons, 40	19,240 00	
	893 do. 20	17,860 00	
	Deficit	900 00	900 00
		38,000 00	
			2,120 00
	49 coupons, 40	1,960 00	
	8 do. 20	160 00	
		2,120 00	

665 EXHIBIT No. 29.

District court of the United States for the district of Wisconsin.

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Selah Chamberlain, and others. } In equity.

Depositions taken on behalf of the defendant, Selah Chamberlain, before Winfield Smith, one of the masters and commissioners of this court:

THURSDAY, 30*th September*, 1858.

Charles S. Gregg, being duly sworn, says:

I reside at La Crosse. In December, 1857, I resided in Greenfield, Monroe County, at the tunnel on the La Crosse road. I was there when Mr. Cleveland came up there with Marshall and Mr. Edgerton to examine the work. I was then in the employ of Mr. Chamberlain. They did not stop there to make much examination of the work. I did not think they —— west of the ridge at all. The way I know it is, that snow had fallen that night and I followed their tracks up on to the ridge, but there no tracks going west of it. They arrived there quite late in the night. We had breakfast about half-past seven. They went out about eight o'clock, and soon came back. They returned this way about ten. They returned there again about the fifteenth of the month, getting there in the night. The next day was very cold, and I do not think they did any work at all. Mr. Marshall told me, in the presence of another man, that if he made an estimate that would be within ten thousand yards of the truth, he would think he was doing well.

Cross-examined by Mr. Lynde.

I was then taking care of the property at the ridge for Mr. Chamberlain There were no men working there in the winter time. I was not there while any men were working there. Mr. Frazier was in charge of a gang of men there before that time. I don't know how many men were at work there at a time. I could not state how much a man could take out a day. I do not know how much sand work there was. I should think a man could take out twenty-five yards of sand a day there. The surface was sand. There was considerable rock; the most of it was rock. I should think you could not pick it, you would have to blast. Mr. Edgerton was not there with Cleveland the second time. Mr. Marshall was there. Another young man was there, whose name I don't recollect. I did not know Mr. Edgerton before I saw him the first time. He is rather a tall man, not thick set. The first time he was there I followed them over the ridge and walked back with them. Mr. Marshall made the remark about the estimate the second time he was there. He said he took the marks on the original stakes opposite the original stations to calculate from. Mr. Cleveland was there with Mr. Marshall the second time, and a young man, a chain-bearer. There were three each time. I think Mr. Peverly was not there either time. The second time they came after dark, and left next day about ten in the morning. They stopped at Mr. Lockwood's, where I boarded. Mr. Cleveland was about there all the time. Mr. Marshall spoke to me about Mr. Peverly, his partner in the city, and gave me his card. I am confident I should have known if Mr. Peverly had been there, or if Mr. Edgerton had come there the second time Mr. Cleveland came. I don't know of Mr. Sill's making any survey that fall or winter. I don't know that he made any at any time. I should have seen him, I think, if he had made any survey that fall or winter. I went away in the middle of January. I am now in Mr. Chamberlain's employ, as foreman in charge of a general train.

666

C. S. GREGG.

Thomas Daniel, being duly sworn, says:

I am a civil engineer. My residence is near Columbus, Ohio. I have been an engineer since about 1840. I have been engaged in railroad engineering since that time. I was over the line of the La Crosse railroad beyond Portage. I was engaged as an engineer on that road from March, 1857, to March, 1858. I am now employed on the St. Croix and Superior road. I know of no way in which the amount of a work done on a railroad, whether complete

or incomplete, can be ascertained with accuracy without access to the original surveys, or to the field-notes of the work as it progressed. To make a remeasurement of the work you would have first to cross-section the entire work as often as might be necessary from the character of the work. Where there was rock work you would have to cross-section the rock and the earth separately. This is in the absence of the field-notes. You would, of course, have to guess in some measure at the original surface of the ground, because the embankment would cover it up, and it would be cut away by the excavations. You could not very well classify the work. You could not at best make, without the original surveys, an estimate which would be entirely accurate, even with all facilities. I know the general character of the work from Portage to the tunnel.

Question. Suppose the work done complete from Portage to Kilbourn City, and all or nearly done, ready for the track, from there to New Lisbon, and four or five miles down east of the tunnel, embracing a distance of sixty-five miles, how accurately could two engineers, without the aid of any field-notes, survey that and estimate the quantity of work done in the space of four days?

(Objected to by Mr. Lynde.)

Answer. That would depend on how near they could guess at it. They could do nothing more than guess at it in that time. An engineer cannot measure side-hill cuts without the original surveys with any degree of accuracy at all. The same is true on level ground, which is wet and marshy, so that the embankment would sink. I have seen this contract of Mr. Chamberlain's under which he did the work west of Portage—the one made in January, 1857.

667 Question. How does it compare generally as to prices with other contracts that you know of being let in 1856 and 1857?

(Objected to by Mr. Lynde.)

Answer. It does not vary much from several that I know in Ohio. The contract of the Cleveland, Columbus, and Cincinnati road, on which I was engaged, the grading to complete the road ready for the track amounted to about thirteen thousand dollars per mile. There is some little rock on that road, but not on the southern part, of which I had the charge. The work is of a lighter character than on the La Crosse road. Labor and materials were then lower there than in Wisconsin in 1857. Part of the time labor there was as low as sixty cents per day. That price ($13,000) does not include chairs and spike. The Columbus and Xenia cost about the same. It was built about the same time. I have been in Wisconsin since about a year last March. I know Mr. Chamberlain by reputation. I think seven or eight years he has been an extensive contractor on railroad and other public works.

Question. What has been his reputation as a contractor as regards ability, means, and promptitude?

(Objected to as irrelevant and immaterial.)

It has been good, as far as I have known.

Cross-examined by Mr. Lynde.

I was division engineer on the La Crosse road. Mine was the northwest division, from Portage City to St. Croix River or Lake. I was not engaged on the line which was located. The lines which I ran were north of the La Crosse road as now constructed. I left the La Crosse road at Portage, and made no surveys on the present completed line of the road. I have been over portions of the present line various times, and have been near it often. I walked from the tunnel to near Manston last fall, about the last of Novem-

ber or first of December. It was for the purpose of coming to Milwaukee. The track was not laid at that time. There was some material then on the bed of the road that would answer well for ballasting. It is difficult for me to tell the character of the work at the tunnel. There is a great difference in that rock before it is exposed to the air and afterwards. There are many kinds of rock which do not change on exposure to the atmosphere. That rock is sand rock, which is hard in its natural position, but falls to pieces on blasting. My object in going over the road was not to see it, any more than curiosity prompted me, but to get the best walking. I could not say what proportion of the work at the tunnel and approaches was rock. I could not say whether there was then any difficulty in ascertaining the character of the work; there would be at this time great difficulty. In classifying work after it is done you are very apt to be unjust to the contractor. You cannot classify it before it is done; the time to do it is as the work progresses. The original field-notes would not aid you to classify the work; the field-notes taken during its progress would aid you. The Ohio contracts I mention were let about 1849. I have no copies of them here. I have a copy of one of them at home. The contract on the Cleveland, Columbus, and Cincin-
668 nati road, between Cleveland and Columbus, was let to Messrs. Hervey, Stone & Witt. The contract was for so much a mile, and the cost did not depend on the amount of work done. I cannot state the average amount of work per mile. I am thirty-three years of age. I have been railroading ever since I was fifteen years old. The reasonableness of the price of the tunnel approaches at two dollars per yard would depend on the amount of rock. I have known rock let as high as seven dollars per yard. I have known such rock as this let at seven. I never saw any just like this before. I never knew of earth being let at two dollars per yard except when covered with water. I suppose it would cost from six to ten cents per yard to take out the sand from the tunnel approaches, depending upon the length of the haul. I do not know that I ever knew of work like the tunnel work being let at five dollars per yard. I have known tunnel work let at a higher price than that for granite rock. There is more risk about the work than about hard work. If I had had Mr. Chamberlain's first contract I should not have wanted to change it for a price very much less than that. Not that I think the contract was very good, but that I have a dislike to tunnel work. Under his first contract the work was to be divided into three sections, I believe, of about thirty-six miles each. I don't know anything about it, but I should think, as a mere guess, that cutting through the ridge would have brought the work in that section up to twenty thousand yards per mile.

Question. Was not the price that Mr. Chamberlain got for the tunnel and approaches clear profit, if the whole work in that section, including the through cut, did not exceed 20,000 yards per mile?

Answer. I could not answer, for this reason: there is a clause in that contract which lessens the price for material when the quantity falls short, and I do not know enough about the quantities of the work on that section to make an estimate. I was not acquainted with Mr. Peverly in Ohio. I think Mr. Stoughton was the division engineer in charge of the division between Portage City and the tunnel. I am not now in Mr. Chamberlain's employ.

Question. Is it not just as easy to get at the amount of excavation on a side-hill cut, where the surface is even, as it is on the level ground? Can it not be ascertained with the same accuracy? I mean after the work is done.

Answer. It might be if you could be sure that the surface had been even. You could only know that from the field-notes; you can get the contents of any figure when you have the length, breadth, and thickness.

THOS. DANIEL.

Don J. Whittemore, being duly sworn, says:

I am a civil engineer. I have been upon railroads since 1845. Prior to that I was doing nothing but surveying since I was able to do anything. I am at present engaged on the Southern Minnesota railroad as chief engineer. It is impossible to make a correct estimate of the amount of work done by observations made afterwards, unless you have the original field-notes. It is impossible to classify work unless you have the notes made during the progress of the work. Accurate measurements are (or should
669 be) taken before work is commenced—showing the contour of the ground before it was disturbed. A person measuring after work is done, without the original data, must assume that the surface was plain, or guess at what it might have been from one side of the cut to the other, which assumptions or conjecture would be likely to lead him into great errors, particularly in heavy work. My knowledge of the material through which a great portion of the La Crosse road runs is such that I should be loath to attempt to classify the work done, after it had been exposed for any length of time. The hard materials become covered over with the soft materials which are washed down over them, and the only way to ascertain the nature of the material is to dig into the slopes. I have been employed on the La Crosse road since 1853, until the summer of 1867, between here and Beaver Dam. The first time I was over the road west of Portage City was in March last. I took the cars at New Lisbon. Two engineers, with an assistant, might take as much time as they pleased, and they could not by measurement ascertain the amount of work done on the La Crosse road between Portage and the tunnel without any prior surveys. They might make an approximate estimate; they might, without the previous data, survey and measure the work so as to make an approximate estimate at the rate of three to four miles a day; but even then they would be liable to gross errors. I read this morning the copy of Mr. Chamberlain's ——— for the construction of the western division of the La Crosse road, made on the 20th of January, 1857, which is in the printed volume of the investigating committee's report. I read that addition which relates to the tunnel. I have been in Wisconsin and Minnesota about five years.

Question. How does that contract compare as to prices with other contracts which you know have been made in Wisconsin, Iowa, or Minnesota, in 1856, and 1857, and 1858?

(Objected to by Mr. Lynde, as irrelevant and immaterial.)

Answer. I am acquainted with two contracts made by the La Crosse company with Jackson & McLaughlin and with Newcomb Cleveland. In the former the limits of quantities and the prices were less than in Mr. Chamberlain's. But the profits, the *pro rata* profits, were greater in Jackson & McLaughlin's contracts than in Mr. Chamberlain's. The percentage of profit would be greater, I should think. That was the division between Madison and Portage. The contract was let about the same time that Mr. Chamberlain's contract was let. I saw the tunnel immediately after they got the approach done on the west side, and had commenced the tunnelling Mr. Chamberlain was to receive, I belive, five dollars a yard for excavation in the tunnel, and two dollars a yard in the approaches, and twenty-five cents a foot for timber.

Question. Taking into account the state of the country, the appearance of the work as it then was, and all other circumstances as they then existed, how, in your opinion, did the prices of the tunnel work in Mr. Chamberlain's contract compare with those in other contracts for the same kind of work let by other companies, if you know of any others?

(Objected to by Mr. Lynde, as irrelevant and inadmissible.)

Answer. I can hardly think of a case similar to that; contrasting other
670 works that I know of with that, I should feel loath to make any change in the prices or amounts. Tunnels are frequently made through sharp points or into bluffs, where you can see beforehand the material in which you are going to work. Most of the Ohio tunnels are of this kind; but in this case the approaches are long, and you cannot know beforehand the character of the work to be done. There is nothing on the surface to indicate the nature of the material that you are to work. If the material had been such that the arching had to be carried along as fast as the excavation, the price named in the contract would not have paid the contractor; my reason for this opinion is that I know an instance of that kind. A tunnel on the Central Ohio road was let at three dollars and a half a yard; after entering it, the roof, on exposure to the atmosphere, began to crumble, and it was necessary to arch it. The contractor failed; they increased his price to four dollars a yard; he worked on and got a hole through the tunnel and the bottom out, and then failed again. The company then took hold, and only suspended work when they failed. Owing to the difficulty of getting hands to work in the worst portion of the tunuel, they were unable to complete it, and the tunnel fell in, until the top of the ridge (150 feet above) fell in. I mention this to show the risk; some tunnels are much more favorable. There is always in tunnel work a great uncertainty as to what the work will be, and the contractor has to run a risk, unless he provides against it in his contract.

Cross-examined by Mr. Lynde.

I am not aware that any of the directors of the company were interested in the Jackson & McLaughlin contract. I do not know that Jackson & McLaughlin gave anything for that contract. I mean by what I said about the comparative profits of Jackson & McLaughlin's and Chamberlain's contracts, that considering the actual amount of work to be done at the prices named in each contract, there would be a greater profit in proportion to the money expended in Jackson & McLaughlin's contract than in Mr. Chamberlain's. Their contract was from Madison to Portage. I don't know how they were to be paid, but I think in cash, or partly in cash. The limit of quantities in the Madison and Portage road was twelve thousand yards per mile through the whole line. That contract included also the road from Columbus to Midland. I never made a survey on that portion of the road embraced in Mr. Chamberlain's contract; I have been over it several times. I think there is scarcely any hard pan between Beaver Dam and Rock River. I know nothing of the character of the hard pan west of Portage. I do not know that there is any hard pan west of Portage. In this State hard pan is more like gravel and clay cemented—bluish clay with small limestone and small round stone in it, very compact and very dry; there are various grades of hardness; sometimes you can hardly drill it; you can trace it until you can hardly distinguish it from clay. On the La Crosse road we have met it with loose running sand directly over it; it was in a bed parallel to the surface of the ground where there was no external indi-
671 cation of it; sometimes the upper surface of it was parallel to the surface of the ground, sometimes not; sometimes it appears on one side of the track and loses itself before it reaches the other side of the track.

If you should go into an excavation, by shovelling into the slope beyond the reach of the weather, you could tell where the hard pan had been cut into, but frequently the soft material above the hard pan will slip down on to it, and coat it entirely. I have seen the material that came out of the tunnel. It comes out in the form of sand; sometimes in blocks; but then

the consistency has been destroyed by the powder. The rock is soft sand rock as it comes out. The approaches to this tunnel seemed to me to be of the same material as the tunnel, soft sand rock; it was frozen at the time, and it was difficult for me to judge how much was rock and how much was earth. I should want, for taking out the approaches to the tunnel, a dollar and a half for the rock, and thirty cents for the common earth; I should want this price for the earth, because I think it was a mere surface covering of the rock, and filled with oak grubs. Some of the earth could have been removed for fifteen cents, and perhaps all. I don't think the rock excavation could have been done for thirty cents; I don't know what it has actually cost. I don't think the arching could have been done for twelve dollars a perch. I would calculate to do that with brick; my reason for that is, that I once got up a bid for a similar work. The shafts to be dug were holes from the top into the tunnel, to assist in the work. I should think the price ($10 per yard) would be enough. The cost increases rapidly with the depth. I cannot say how much work there was per mile on this section in which the tunnel is. I should have charged more for the tunnel work than five dollars per yard; I should not wish to take the tunnelling alone much less than six dollars a yard. But I am not a contractor; contractors are more risky than I am. As much of the material as I saw came out of the tunnel in the form of sand; some I understood came out in blocks. When I spoke of six dollars a yard, I mean that I would not, before any work was done there, have taken a contract for less than that price. I would not have known what the material would be, but I should have found that it would be soft sand rock—so soft that the arching must follow the heading and the breasting. I should think, in that case, that there would be doubt about the work being profitable, even at the prices named in the contract. I should want to have prices that would pay me. The difficulty in such a case is to get men to work there. There was quite a large amount of heavy work near Kilbourn City, or about there. There are some heavy cuts between Portage and Kilbourn City. I think there is some steep side-hill work near the Wisconsin River. Then there is the tunnel, which of course is heavy work.

In making my statement in regard to the impossibility of ascertaining the amount of work done from surveys made after the work is completed, I assumed that there was no cross-section stakes, or other data to guide the engineers. The stakes, if standing, might mislead them unless they knew the distance each was from the other. These stakes are at equal distances from each other except when the nature of the work requires them to be nearer together, and then they are so put. If an engineer does not
672 know the distances and position of the stakes he would be confused by them. If an engineer knew the position of the cross-section stakes they would measure a mile a day more in making an approximate estimate than what I have stated. I think there was no arching done in the tunnel. I have not been in it since it was completed. I could not, from that contract, now make an estimate of what price per lineal yard Mr. Chamberlain would have received for the tunnel work if it had been necessary to make the arch. I could not tell the amount of timber necessary. I could not tell the number of yards of packing over and on the sides of the arch. If it was to be arched with stone I should not know where I could get the stone, and how far I should have to haul it. Those are all the items which I could not ascertain. I will make an estimate such as you desire.

Re-examined by Mr. Emmons.

If Mr. Chamberlain had come on to water or quicksand in the tunnel it

would of course have added to the expense. I have never known quicksand found in a tunnel. I have known of water troubling contractors very much. In deep cuts quicksand is very common. I know a cut where the extreme depth was one hundred feet where they had intended to make a tunnel, but the water troubled them so much, and the nature of the material was such, that they concluded to make a thorough cut, and did so. For any surface indications that appeared, Mr. Chamberlain might have encountered a great many obstacles that would largely increase the expense to him of the work. There was nothing that I know of to indicate whether or not he would meet such obstacles. It was matter of uncertainty. It would depend upon how serious the obstacles were, whether five dollars a yard would pay for the work. If there were no obstacles, and the men were willing to work, that price would pay well.

D. J. WHITTEMORE.

FRIDAY, 1 *October*, 1858.

On this day appeared Mr. Lynde, of counsel for the complainant, and Mr. Emmons, of counsel for the defendant Selah Chamberlain.

Don J. Whittemore recalled.—Cross-examined by Mr. Lynde.

I have made the estimate as desired by you as to the cost of the arched tunnel. I call a perch twenty-five cubic feet.

The estimate is as follows:

An arched tunnel twenty-two feet high and twenty-four feet in width in the clear, with a thickness of wall and arch of twenty inches, requires 21 cubic yards excavation per lineal foot, which, at $5 00, is	$105 00
4¼ perches brick masonry, per lineal foot $12	51 00
Cost of lineal foot	156 00
1,330 lineal feet cost	207,480 00

This is for a double track.

673 An arched tunnel sixteen feet in width and twenty-two feet high in the clear, with a thickness of wall and arch of sixteen inches, requires 3 perches brick masonry, per lineal foot, at $12 00	36 00
14½ cubic yards excavation, per lineal foot, at $5 00	72 50
Cost of one lineal foot	108 50
1,330 lineal feet cost	144,305 00

This is for a single track.

Re-examined by Mr. Emmons.

I have made an estimate of the number of yards in the cut, if it was a thorough cut, assuming the height of the cutting at each end of the tunnel to be sixty feet, and the highest point intervening to be one hundred and sixty feet. There would then require to be moved at least seven hundred thousand yards of material. This is for the length of the present tunnel, 1,330 feet. I do not know that these data are correct. From observations I suppose they are approximately correct. A person in judging of so large an amount of work might easily be mistaken. I speak of the dimensions of the cut, of which I have no knowledge except from the information derived from the engineers.

Cross-examined by Mr. Lynde.

If the height of the ridge to be cut through was one foot less than I have assumed it, the amount of cutting would be considerably less. One foot less depth of cutting would make a difference of about twelve thousand yards of cutting. Ten feet less depth would make a difference of about one hundred fifteen thousand yards of cutting. This is estimating the slope at one to one.

D. J. WHITTEMORE.

Isaac C. Brewer, being duly sworn, says:

I am a civil engineer. I have been engaged as such since 1846. I have been so engaged in Delaware, Pennsylvania, Mississippi, Ohio, and Wisconsin, in railroad engineering. I am now engaged in Minnesota in railroad engineering. I am division engineer. It is not possible to measure accurately work after it is completed without access to the field-notes taken before the completion of the work. The degree of accuracy with which it could be done would depend a great deal upon the time spent. A great many things would have to be guessed at at any rate. It would be impossible, either in cuts or fills, to find where the original surface was, after the work was done, without the original field-notes. I was employed on the La Crosse road, on the northwestern division, not on the line located, but on a line run north of that. I saw the approaches to the tunnel after the ground was broken, but before it was finished. There was a depression on the east side of the hill before reaching it. That ridge might have turned out to be quicksand, or there might have been water there from springs of
674 in the hill. Indications of this kind would be taken into account by a contractor bidding for the work, and would of course enhance the price. I was through that part of the country in November, 1857. It was thinly settled, the roads were very bad, and it was a hard country to get through. I was up there in April, 1857, and I know its general features.

Cross-examined by Mr. Lynde.

The east approach crossed a depression before reaching the main hill. I think the greater part of that depression is filled, on the south side of the tunnel at least. That depression may have made the excavation a little less at that point. That depression would hardly show now. There was a small ravine or gully, which was crossed by the tunnel approach. There is a difficulty of ascertaing the amount of cutting and filling, besides the difficulty of ascertaining the original surface. There may be sinking spots. The amount of work in a cut can be measured if you know the original surface. In filling you can ascertain the amount of work done, if you have the original surface, and there is no sinking, or if you can measure the pit where the material comes from for the embankment. Then you would have to know the natural surface of the earth where the pit was. If there is a sinking spot, you cannot guess how much earth goes in there, unless you have some such data.

Re-examined by Mr. Emmons.

I have known Mr. Chamberlain by reputation for four or five years. I think he has been very extensively engaged in the construction of public works in Ohio, Vermont, and Pennsylvania.

Question. What has been Mr. Chamberlain's reputation as a contractor for ability, means, and promptness?

(Objected to, as irrelevant.)

Answer. It has been good.

ISAAC C. BREWER.

John McLean Staughton, being duly sworn, says:

I am a civil engineer. I have been such since 1849. I have been so employed since February, 1857, on the western division of the La Crosse road, between Kilbourn City and La Crosse, in the capacity of division engineer. I know of Mr. Chamberlain's having a contract for the ballasting of the eastern division of the road. The portion of the road which crosses Fox Lake, between Beaver Dam and Portage, was included in that contract. There was a very considerable sink there. The work was piled there. It was so wet and soft there that it could not be filled at first without taking an immense quantity of earth. It was so bad that even the piling would stand, and it became necessary to fill it afterwards. I have with me a copy of the final estimate under the gravel contract up to the first of October last for the ballasting between Beaver Dam and Portage.

Question. What do you know about its correctness? Tell all you know about, and the source of your information.

(Objected to, as incomplete.)

675 Answer. The gravel pits, from which the materials were taken, were measured by different assistants on the road, and cross-sectioned. Those cross-sections were returned to the office and the quantities then calculated. One of the gravel pits I measured myself. I have been over the calculations made of the others by the assistant engineers, and have found them to be correct. I have not been over every item in every calculation; I have been over many of them to test them and satisfy myself that they are correct. I have been over enough of them to test them and satisfy that they are correct. The last item is derived from the number of yards. I could not separate this from the first item. I do not know where they hauled gravel, to what particular mile or portion of the work. The chief engineer cannot, of course, go and measure every part of the work. The assistant engineers, in the first place, go out to the place where gravel is to be taken, and accurately measure and cross-section the natural surface of the ground. Then they go again at intervals, from month to month, and measure and cross-section the pits whence the gravel has been taken. From these measurements calculation are made of the amount of work done and gravel removed. That is the manner in which these estimates are made up.

This paper (marked A) is the copy which I have mentioned.

(Paper produced, marked A, and offered in evidence in connection with the testimony of the witness.)

(Objected to by Mr. Lynde, as incompetent and secondary evidence, being an estimate in gross, without the data upon which it is made.)

(Paper is hereto annexed.)

I had charge, as division engineer, of the work on the La Crosse railroad, from Kilbourn City to La Crosse, performed by Mr. Chamberlain under his contract with the company.

(Original papers are produced by Mr. Emmons, execution thereof proved, copies thereof are taken, marked, respectively, B and C, and are attached hereto. They are offered in evidence by the counsel for the defendant Chamberlain, and are objected to by Mr. Lynde, because they are irrelevant and immaterial. The contract paper, marked B, is offered merely as introductory to the paper marked C. The above objection is made to each paper separately. Paper marked C is offered in aid to the testimony of this witness and of witnesses hereafter to be examined.

Counsel for the defendant Selah Chamberlain also produces the certified copy of the final estimate of C. W. Woodward, chief engineer, which is hereto annexed and marked D. The same is objected to by Mr. Lynde as being secondary evidence, in that it is made up of prior estimates, which

are not produced, and not from actual survey at the time, and that the original estimate would not be evidence unless sworn to. This certified (marked D) is admitted by Mr. Lynde to be a true copy of the original estimate on file in the office of the secretary of the La Crosse and Milwaukee Railroad Company, which is now exhibited here.)

676 Witness resumes:

I know (as far as any division engineer ever informs himself upon such matters) that the amounts of work mentioned in this paper, marked D, were actually performed. No division engineer, of course, ever makes all the measurements in person, but relies upon the measurements taken by assistant engineers. The returns were made to me by the assistant engineers, and I am satisfied that they are correct. Upon a portion of the work, between Kilbourn City and Portage, I did not see the returns previous to making this estimate, but I examined them afterwards. I also accompanied Mr. Woodward and Mr. Sill in their remeasurements, and assisted them.

Those remeasurements are contained in the paper marked C. In those remeasurements we had the benefit of all the original field-notes and the returns of the division and assistant engineers. I was then in the employ of the La Crosse and Milwaukee Railroad Company. There was other assistants beside Mr. Sill, Mr. Woodward, and myself. There was Mr. Howell. We were all in the employ of the company. I don't remember how long Mr. Woodward and Mr. Sill were occupied in that remeasurement; I think several weeks were spent about it in all. I think we made the remeasurements carefully and accurately; so accurately that if there had been any error in former measurements we should have detected it.

I think we arrived at the correct results very closely. I remember that there was a difference between our remeasurement of the work at one of the tunnel approaches and the final estimate of the first of October. I think that difference must have arisen in this way: the sand on the sides of the approach had washed down into the cut to some extent, and so, when Mr. Sill and Mr. Woodward, the cut did not show the full amount of work which had been done. The difference was not material; I don't remember what it was. There was also another difference, which arose in this way: the assistant engineers had not got through with their work, and had not made full returns of the work at the tunnel approaches when the final estimate was made. We were not aware that there was any necessity for the returns being made by the day, and so they were a little behind, as they frequently were. Mr. Woodward therfore acted on a prior return, instead of one made up to the very day of the final estimate. I commenced work in March, 1857. I made the surveys myself from Kilbourn City to La Crosse. The rock excavation was estimated at a dollar a yard in the final estimate of 1st October, 1857. In the re-estimate it was estimated at seventy-five cents a yard.

Question. What occasioned that difference in the two estimates?

Answer. It was owing to the fact that the number of yards of earth work per mile fell short of twenty thousand, in which case, by the contract, twenty-five cents was to be deducted from the price per yard. The first estimates were based on the supposition founded on the profile, that the earth work would exceed 20,000 yards per mile. The haul was made longer than had been originally intended. This diminished the amount of earth work, since the earth from the cuttings was carried to the embankments instead

677 of being wasted. I am in charge of the work, including the tunnel.

I had charge of the original surveys myself. I received instructions from the president and chief engineer in March, 1857, to run my lines across the ridge with reference to making a thorough cut. I run the lines in April,

about the middle of April, I think. I had just completed my trial lines over the ridge, and the president, Mr. Kilbourn, and Mr. Woodward, chief engineer, came to the ridge for the purpose of examining the lines which I had run, and of determining which should be adopted. I had understood that a thorough cut had been settled upon, and my efforts had been only to get the most feasible route for a thorough cut. The various lines and profiles were examined by those gentlemen, and estimates were made of the cost of a thorough cut on each of these lines. They were made on the basis of the prices mentioned in Mr. Chamberlain's contract, as it then existed, so at least I then supposed, as they assumed instantly the prices. I did not then know what the prices in Mr. Chamberlain's contract were, and I do not now remember what prices they fixed.

Question. Do you remember anything being said between them at that time, in estimating the cost of the thorough cut, about Mr. Chamberlain's original bill, on which his contract of January, 1857, was let for tunnel work and for thorough cut work?

(Objected to by Mr. Lynde as irrelevant and immaterial.)

Answer. I remember that there was a conversation in regard to that. The particulars of the conversation I do not remember.

Question. What was concluded upon between them?

(Objected to on the same ground.)

Answer. They concluded that a thorough cut was out of the question, and that it was necessary to have a tunnel, although Mr. Kilbourn was strongly opposed to having any tunnel on the road.

To what did Mr. Kilbourn yield? What reason decided them?

(Objected to on the same ground.)

Answer. The comparative cost of the tunnel and thorough cut was the consideration that determined them. The lesser expense of the tunnel decided it.

Question. Do you know whether they then agreed upon a tunnel?

(Objected to on the same ground.)

Answer. They did; and I was instructed to locate immediately a line for a tunnel. The side stakes were set at once, so that work could be commenced.

Question. At what date was this?

Answer. I could not state exactly, but I should think about the 15th of April, 1857.

Question. What was the comparative expense of the thorough cut and of the tunnel according to their estimate?

(Objected to on the same ground.)

Answer. Taking the most feasible location for the thorough cut, at the prices named in the contract for the thorough cut work, the expense would have been about three times as great for the thorough cut as it had been for the tunnel at the prices fixed in the present contract for the tunnel
678 work. This is my conclusion, and I have carefully considered the matter. I do not remember the precise relative cost of the two modes as estimated by them at that time.

Question. Did Mr. Kilbourn object to the tunnel at that time?

(Objected to on the same ground.)

Answer. Mr. Kilbourn was strongly opposed to the plan of a tunnel, saying he did not know anything about tunnel work; that he doubted whether it was feasible; whether too long a time would not be consumed in making it. Mr. Woodward mentioned to him that I had been engaged a good deal in tunnel work, and was well acquainted with it. He finally yielded upon consultation with the chief engineer and others, in view of the great saving in expense.

(Mr. Lynde objects to all evidence of the conversations of Mr. Kilbourn and Mr. Woodward and the witness, and all evidence on that subject is taken subject to the objection that it is irrelevant and immaterial.)

Mr. Kilbourn stated that he was going to St. Paul, and consequently could not make the arrangement himself with Mr. Chamberlain in regard to the tunnel, but that he would write to Mr. Goodrich, vice-president of the company, about it. He wrote a letter at Sparta which was sent to Mr. Goodrich. I know the prices at which the tunnel work was let. I have been engaged upon one tunnel of about the same length as this; I had charge of it. I had visited a great many in the course of construction.

Question. In view of all surrounding circumstances then existing, was that a reasonable contract in point of price agreed to be paid for the work?

(Objected to by Mr. Lynde.)

My impression was that it was very high in some particulars and very moderate in others. The price for the approaches was, I thought, too high; the price for the tunnel work I should have wanted increased, to make myself safe in doing it; the arch work I thought too low, for I did not think the material for it could be got nearer than Kilbourn City, and the roads were very bad. When I was there the ridge was covered with snow, quite deep, except where very strong winds had blown it off, and the exposed surface of the ground indicated sandstone, with some iron; there were also pieces of flint about. There were springs of water, one on each side of the ridge, and the expectation was that we should meet water. Water is now dripping at several places in the tunnel, causing some little trouble but nothing at all serious. The approaches are in valleys coming up to the main ridge; of course we selected, in locating the line, the lowest ground; the ground slopes on either side from the ridge to the approaches. The idea of a tunnel had been talked of before. When I received my instructions in the first place I inquired about a tunnel, but was informed that Mr. Kilbourn had said positively that there should be no tunnel on the road. I run all my lines in reference to a thorough cut. There is almost always a great risk in making a tunnel, (unless it be a very short one,) as regards the material to be excavated from it. Sometimes, when the tunnel is short, and you can see the face of the rock on both sides, you can have a certainty of what the work will be, generally; however, there is a great uncertainty. I know of a tunnel on the Baltimore and
679 Ohio road which was let with the expectation that the material was limestone; upon working into the hill, however, it was found that the limestone was immediately over the tunnel, forming a solid roof, and that under that was only a clay which was shovelled out without trouble.

Question. What rates have you known tunnel works to cost, or to let at? on what circumstances does the cost of construction depend?

(Objected to by Mr. Lynde because it is double—that the first part is immaterial and irrelevant.)

Answer. I know of no tunnels which have been let before the ground was opened, so as to show what the material would be, being let at less than six to eight dollars a yard. The price depends upon the knowledge which may be obtained by the nature of the material in the neighborhood, and also on the price of labor, materials, and provisions.

Cross-examined by Mr. Lynde.

I am now in the employ of the La Crosse Railroad Company, not of Mr. Chamberlain. The company pays me through Mr. Doty, secretary and treasurer. I am engineer on the road. I am hardly chief engineer, but I

am remaining to finish up what engineering there is to be done. I suppose I am still division engineer. I have at several different times had to do with matters on the eastern division. I have measured several gravel pits—one about 14 miles, one about 48 miles, and one about 81 miles from Milwaukee. I have also made a plan for a drawbridge, which was to have been built in 1857 over the Portage canal. It was never built. I don't remember just now of anything else in particular which I have done on the eastern division. Three or four weeks ago I set some grade stakes for raising the track at one place on the eastern division. Two of the gravel pits, 14 and 48 miles from here, I measured within the past month. I don't remember when I measured the other; it was some time last winter. That is between Cambria and Midland, about 14 miles, I should think, this side of Portage. I do not know for what purpose it was measured. I was requested by Mr. Woodward to measure it. I make a return of my measurement. I had the original cross sections, which were furnished to me by him from the office. I don't recollect how much land had been taken out of these. I have nothing now to show. I should think there were 70,000 or 80,000 yards. That was a borrowing pit. I have seen gravel taken from that pit and put on the road for ballasting. I have seen them at work three or four miles from that pit with gravel which came from that pit. I don't know how much of the gravel from that pit was used for ballasting. It is 27 miles from Fox Lake to Portage. It is less than a quarter of a mile from Fox Lake to the crossing of Fox Lake. I don't know whether the work done on that portion of the road that crossed Fox Lake was included in the ballasting contract. I don't think I have testified on my direct examination that it was. A majority of the work done there was done in the summer of 1857.

I can't tell within a month when he (Chamberlain) began or when
680 he stopped. I was then at work between Kilbourn City and La Crosse. I passed over the road between Beaver Dam and Portage, I suppose, about once a month in the cars. I did not pass in any other way. In passing I got out of the train a number of times to go and look at the work at Fox Lake, then under construction. The trains stopped there to wood and water and to change passengers, and they went very slowly over the work, giving me an opportunity to examine it. I should judge it was four or five hundred feet from where the cars stopped to take wood and water to the point of the crossing of Fox Lake. I can swear that it is not more than a quarter of a mile. The water station is east of the depot, and the wood is strung along some distance east of that. I don't remember any particular dates when I got out of the cars to look at the work, but I recollect doing so several times. I never stayed over a train there. I did not see anything being done there except the trackmen fixing the track, putting under it material which had been thrown off there. The track was laid there at that time. It was on material that had been hauled up there. The first time that I recollect paying attention to it, some of the track, I can't say how much, was laid on piling. I don't recollect of seeing them doing anything to that. The men were raising track on the embankment. It appeared sometimes to have settled, sometimes on to one side, throwing the track out of line. That occurred elsewhere on the road, about 12 miles this side of La Crosse. These are the only indications that I saw of there being a sink-hole there. Four or five times when I have been passing in the cars I have seen them lining up the track. That is all that I have seen from which I know that there was a sink-hole there. I don't know how much gravel it took to line up the track. I do not know of my own knowledge that Mr. Chamberlain had any authority to fill up that crossing at Fox Lake. I do not know how much earth or gravel he used in filling there. I cannot now state, from information or otherwise, how much he

used. I can't state, from my knowledge or from information, where he got the earth or gravel that he used in that filling. I only know from the returns of the assistant engineers how much ballasting was put on the road between Beaver Dam and Portage. These returns are in the office of the chief engineer, in this city of Milwaukee. I judge of the character of the ground at Fox Lake, and of the necessity of piling and filling, from what I have been told, and also from what I saw of the bank and piling settling. I saw nothing but what I have stated. I have it from Mr. Woodward that this paper marked A is the final estimate of the work, and I have the estimate of his estimate book, which he left in my possession. That book does not show the data on which this estimate was made up. That is the only knowledge I have of this being the final estimate. That estimate is made up from the cross sections and notes of the different engineers, and the cross sections of the borrowing pits. Those cross sections are in the office of the chief engineer, in my custody. I know that there are cross sections and returns from which this estimate was made up. I only know as to the correctness of the estimate from the fact that I have measured and cross-sectioned one of the borrowing pits, and have examined the cross sections of the others, made by the assistant engineers, and
681 have tested various items of their calculations. I tested the calculations of some of the areas of the cross sections and of some of the quantities. I did not go through the whole thing at all, but only here and there to satisfy myself I have made those calculations within the last few days. I am certain that I made calculations in regard to the ballasting. I did not add up the quantities contained in those various reports, and I do not know what the sum total is. I suppose this estimate was made up from the sum of those quantities. I did not find among them any return of the work at Fox Lake. I suppose that was kept separate. I think I measured the borrowing pit between Cambria and Midland eight or ten months ago. I don't know much of the gravel from that pit was used for ballasting. I have among my reports one that would agree with the measurement of the borrowing pit I measured. It is the report that I made.

SATURDAY, 2*d October*, 1858.

I have brought this morning such of the returns as I could find. I suppose they are not all. I find only three of the final returns, and two by assistant engineers, and one by myself, I have some monthly returns besides. I have no other return of the number of yards in the pit measured by me except that made by myself. I have the original cross sections. I have, in addition, the cross sections of another pit, but not the quantities, as the calculations are not made. I have nothing to compare my measurements with except the quantities mentioned to me by the chief engineer as having been ascertained before. He gave them to me verbally. He did not give me the exact quantities; but stated that I had made it a trifle less than it had been made before. These returns apply to a pit at Portage City, one near Midland, I believe, and one west of Fox Lake, besides the one which I measured. In regard to the one west of Fox Lake, the cross sections are returned, but not the quantities. I do not know, and have nothing to show, how much of the gravel taken out of the Midland pit was used in ballasting. I suppose that the gravel from the Portage pit was used on the eastern division, excepting the deduction mentioned in the return for the quantity used west of Portage, from the fact that such deduction is mentioned. I have made some calculations on these other two returns. I have calculated some of the areas and found them correct. I have not made any calculation on the return of the pit west of Fox Lake. All the reports that I have with me show in all 138,667 yards of gravel

taken out of the borrowing pits. I do not know that Mr. Chamberlain opened that borrowing pit half way between Cambria and Midland, or, as it is called, the Steamshovel pit, (having been worked by a steam shovel.) I have been told that he did. I don't find any monthly return of cross sections of the gravel pits on the eastern division. There are so many papers and books there that I have not been enabled to examine them all. I have never seen those returns there. If Mr. Chamberlain drew his pay each month for ballasting done, he probably did so on the basis of the monthly estimates, which are made up from the returns of the assistant engineers. I suppose the chief engineer very seldom
682 makes a supposed estimate. I don't know how much of the western division was completed by the 1st of October, 1857, and don't remember whether the cars then run beyond or to Kilbourn City. It is seventeen or eighteen miles from Portage to Kilbourn City. The road was graded to Orange, about four miles west of New Lisbon. I believe the grade was completed to that place on the first of October, 1857. I believe New Lisbon is about forty-three miles west of Portage. To the best of my recollection, the road was all graded to that point at that time. I think there was at that date a side track at Lewistown and Kilbourn City. I am not positive whether there was any side track at Portage included in the western division. I do not know exactly where the line is between the two divisions. I am certain there was then side track at Kilbourn City. I could not say how much was then completed on the whole division. I do not know that there was any track laid west of Kilbourn City. In January, 1858, there was completed on the western division two 32-100 miles of side track, including twelve hundred feet of main line, which had not before been estimated. At Lewistown there were 1,053 feet; at Kilbourn City, 3,602; at Linden, 1,102; at Manston, 1,496; at New Lisbon, 3,808; and the twelve hundred feet of main line. The road was graded to Orange. That I state from recollection; I have no minutes to show that. The item of grading and masonry was made up by taking the grading and masonry west of New Lisbon only. It was put in at $10,000 per mile, because it was supposed that the remainder of the work to be done would amount to about $2,000 per mile to make up the $12,000 per mile for the 9½ miles. Immediately west of the tunnel there was some grading done, but not finished. There was a space immediately west of the tunnel where no grading was done; then there was about three-quarters of a mile partially done. Then a short distance west of that was another piece of two miles nearly finished. Commencing about half a mile west of Sparta, there was work done at various points, scattered over some sixteen miles; at some places very little, and at some places nearly finished —in all, about 36,500 yards. There were a great many places on the western division where there was extra haul. There is a memorandum of it made up by Mr. Woodward, in his handwriting, from measurements made by the assistant engineers. This paper merely shows the extra haul, not the whole length of haul. I suppose most of the returns of the assistant engineers, from which this statement was made up, are in the office of the chief engineer. On the first of October, 1857, twenty-three hundred and thirteen stations were completed as to grubbing and clearing, making something over forty-four miles of grubbing and clearing—actual stations of timber which had been grubbed and cleared. There were a good many stations on the work where no grubbing and clearing was done. The actual work done included also a proportionate amount of stations where no grubbing and clearing was done. The amount of grubbing and clearing which I have stated to have been done I derive entirely from a memorandum in my possession, made in the handwriting of the chief engineer. I will furnish a copy of that memorandum, to be attached to my deposition.

Question. From your knowledge of the line of the road, can you
683 say that there were forty-four miles of actual grubbing and clearing in all to be done on the western division?

(Objected to by Mr. Emmons as irrelevant and immaterial.)

Answer. I think there was more than that—I can't tell how much more. There had been on the first of October, 1857, some grubbing and clearing done west of the tunnel—I think about eight miles. I have no returns showing the amount of solid rock excavations up to that time. This item in the engineer's estimate is made up from the returns of the assistant engineers. I suppose those returns are kept in the office of the chief engineer. I have a memorandum, I think, showing the roadway and cattle passes made by the first of October, 1857; the items of it were given to me by Mr. Woodward some ten days or two weeks ago. I went along with Mr. Woodward and Mr. Sill in their remeasurement, and was present when the items were first entered by them. I remember some of the items. I know about this arched roadway; it is about two miles west of Kilbourn City. It is of stone. It had to be built of very heavy work, because the foundations were bad. I suppose the work would be worth about $4 or $5 a perch. I don't know the amount of stone work in it; I suppose the returns in the chief engineer's office will show. I recollect one under pass that was completed by the first of October. It was the other side of Kilbourn City, about two miles. It was made of two bents of timber planked up. I don't remember the height of the bank. I should think at a rough guess, that it would cost about two hundred dollars. I don't know how much timber and lumber were used in its construction. I suppose, according to the best of my recollection, that these are composed of mudsills, with three upright posts at each side, with caps on top of those posts, made of timber about a foot square. There are braces (diagonal) running from near the bottom of the posts to the mudsills. I suppose there are also cross pieces of ten inches to a foot square, and stringers. I should think that under pass is about fifteen feet high. I do not now recollect any other than the one I have mentioned. I will give a copy of the memorandum of roadway and cattle passes. The item of "excavations for foundations and timber for same" applies to all excavations for culverts. In many of those timber foundations are put in for the masonry to rest on, to prevent the masonry from settling unevenly and cracking, especially where the ground was soft. I knew where most of the excavations were done. They were at the culverts and bridges. There were some masonry culverts. There was one about a mile west of Kilbourn City. There were several put in west of Kilbourn City before the first of October, 1857. The item of bank walls includes several walls. There is one at Lone Rock, between Portage and Kilbourn City. I don't remember the dimensions. There was one about 2½ miles west of Kilbourn City. There was one about ½ a mile this side of Kilbourn City. That is all the bank wall that I remember. The quantities of those were returned to the office of the chief engineer, I suppose, and should now be in his office, of which I have charge. There was some pile bridging at these different places, I think, between Portage and Kilbourn City. I don't know how that item is made up.

I think that arched roadway is about 2½ miles west of Kilbourn City. It is where the road crosses on an arch over a ravine, in which runs a
684 highway. The tunnel culvert is near Kilbourn City, and is a culvert tunnelled through the rock to let out the water from a ravine which had been dammed up by the embankment of the road. I don't know how much ballasting had been done by the first of October, 1857. I could not tell whether there were five miles or ten miles. There was some. It ought to appear in the returns of the office of the chief engineer. I don't know whether Mr. Woodward is now chief engineer.

The paper marked E, which I now produce, is a copy of the memorandum made by Mr. Woodward as to the grubbing and clearing which I have mentioned.

(Paper marked E produced and attached hereto as a part of this deposition.)

This paper now produced by me, marked F, is a copy of the memorandum in Mr. Woodward's handwriting, mentioned by me as relating to the extra haul.

(Paper marked F produced and attached hereto as a part of this deposition.)

I have looked in the office for further returns, but I have found none relating to road-crossings and under-passes.

J. McL. STAUGHTON.

William R. Sill, being duly sworn, says:

I have been an engineer—a civil engineer. I followed that profession from 1844 to 1856. I have been in almost all capacities as engineer on railroads. I was chief engineer on the La Crosse road from 1853 to 1856, about two years and a half. I was succeeded directly by Mr. Kilbourn, and afterwards by Mr. Woodward. I was employed to make a re-estimate of work done by Mr. Chamberlain on the western division of the La Crosse road, under the contracts relating to that work. I undertook the job under an appointment made by resolution of the board of directors of the La Crosse and Milwaukee Railroad Company. I acted under that. Mr. E. W. Woodward, chief engineer of the road, acted in concert with me. Acting under that resolution, Mr. Woodward and I went on to the work with such assistants as were necessary with the original profile, cross sections, and field-notes of the work, and proceeded to make a re-estimate. We estimated up to the first of October, 1857. This being in March, I was of course obliged to rely upon what Mr. Woodward and Mr. Staughton told me as to the amount of work that had been then (1st October, 1857) done. We had access to all papers that I considered necessary. Everything that I called for was furnished me. All field-notes and surface-notes were at my command. I carefully compared them with the work as completed. In all cases where I considered it necessary we took new measurements. We had access to all contracts, all profiles, all field-notes, all cross sections—everything that an engineer could ask for in making a re-estimate. We made that re-estimate on the prices named in Mr. Chamberlain's contract, putting our own construction upon it. The result was, that we found there had been done upon the main line forty-three miles, at $12,000 per mile, less some items, which I shall mention. We found the work to have been done according to the items stated in the report
685 signed by us, which I now have in my hand, and a copy of which marked C, is hereto annexed. We called it forty-three miles finished, although there was a little not quite completed. There was a little track to be laid on the west end of that, and also some little grading to be done to prepare the bed for the track. There were two 32-100 miles of side track, at which we arrived by measuring the side track laid.

The third item shows the excess of grading, bridging, and masonry, over and above the forty-three miles that were considered complete. The item of extra haul, $27,537 30, was arrived at by careful computation from the notes and from the profile. The next item of grubbing and clearing we arrived at by comparing with what had been done with what yet remained to be done. The solid rock excavation was obtained from measurements made by ourselves. The loose rock excavation was obtained from the returns of the assistant engineers. It is impossible for any one to measure that work after it is completed. The next item, of roadways, bridges, cattle passes, and

changing highways, we arrived at by an examination and estimate of each separately. The excavations of foundations and timber in the same we estimated from the statements of Mr. Woodward, Mr. Staughton, and Mr. Howell. No one can know anything about the amount of timber under a culvert after it is completed. The same in regard to a bridge abutment or any other structure. The next item of bank wall, we took the quantities from the returns of the assistant engineers, and the price, $3 per yard, was agreed upon by Mr. Woodward and myself as a fair price for the work. The next item, of tunnel approach excavation, was got at by careful measurements made by ourselves.

The next item, file bridging, was an estimate of the cost of doing the work.

The item of tunnel culvert at Kilbourn City we got in the same way; we estimated what it was worth to do it; we did not estimate quantities in that.

The next item, ballasting 45 32-100 miles, at $[illegible],000 per mile, as per stipulation, we got at by a close examination of the road that had been ballasted; the price we found in some contract.

The item of grading depot grounds at Kilbourn City, we got at from the returns of the assistant engineers and from an examination of the grounds.

The item of damage for detention and change of line at New Lisbon we allowed on the statements of Mr. Woodward and Mr. Staughton, that the change of line had occurred, and that Mr. Chamberlain had been obliged to pay $1,121 in consequence of the change of line and consequent detention. The above items make a total of $1,106,163 85. From that we made a deduction for work done on the forty-three miles first mentioned that was yet incomplete, being some few banks that were yet narrow, and a small part of the track not yet laid, although everything was ready for it. This was east of Libon; we were careful to make a sufficient deduction to cover any expense of fully completing the 43 miles; this was the same for which a deduction had been made in the estimate of the chief engineer. In our estimate, we called the solid rock excavation seventy-five cents a yard; in the chief engineer's previous estimate, of October 1, 1857, the same
686 item was called one dollar per yard. This difference in prices arose in this way: by the terms of Mr. Chamberlain's contract of January 20, he was to be entitled to only seventy-five cents per cubic yard if the whole amount of earth work excavation in the section should fall short of twenty thousand yards per mile; by computation we found that the whole earth work did fall short of twenty thousand yards per mile, and therefore we fixed the price at seventy-five cents. In making up the third item of grading, bridging, and masonry, over and above the forty-three miles, Mr. Woodward and myself had considerable discussion in regard to the basis to be fixed upon. We finally settled upon a basis which produces the result in our report, and which differs from the basis which they had before. Had we assumed the grading, bridging, and masonry to be a less proportion of the whole work embraced in *in* the contract, then the amount of the item would have been less; had we assumed the proportion to be greater, the amount of the item would have been greater. The proportions were obtained by an estimate. There was in each mile an average of so many thousand yards to be done in the first place, as found from a computation of the whole. We also estimated the value averaged of the bridging and culverts per mile; also the value of the track-laying, ties, chairs, and spike. From those data, by the simple rule of proportion, we arrived at the proportion of any one of the items to the whole. We measured all the work that has been done under Mr. Chamberlain's contract. An average of the whole work would make to each mile so many thousand yards of grading. So we divided the total esti-

mated cost of the bridging and masonry by the number of miles in the division, and then got at the average cost of that work per mile. The items of ties, track-laying, chairs, and spike, we compute for one mile, as the cost of those is substantially the same for each mile. If, for instance, two thirds of the grading work had been done within the space of this forty-three miles, we should have allowed, in the first place, the forty-three miles, and then we should have included in this item of "extra" the excess of grading done above the proportionate amount. In the final estimate of the engineer he had assumed, in the item of extra grading, bridging, and masonry as a a basis, the proportion of amount of work done west of New Lisbon, to the whole amount to be done west of New Lisbon, without regard to the excess of average of work done east of New Lisbon. The item of grubbing and clearing was got at by the same process; but in that item there is a broader margin for the exercise of judgment than in any other item. It would be extremely difficult to estimate exactly the proportion which the amount of grubbing and clearing already done bore to the whole amount to be done on the line. I am familiar with the ridge about where the tunnel is, and also where the thorough cut would have been. I did not run the lines, but I became familiar with the country. I suppose that I do know where the lines were run, and I believe that I have examined them all. I am prepared to say whether there would be a difference in the cost to the company of the tunnel and of a thorough cut through the ridge, at the prices respectively named in Mr. Chamberlain's contract, or at any other reasonable prices for the work. In my opinion a tunnel would
687 not cost over one third as much as a thorough cut at any point in the ridge, supposing in each case a good road to be made. The tunnel of the dimensions now fixed requires an excavation of about 14,500 cubic yards. Assuming the depth of the cut at the end of the tunnel to be fifty-four feet, and at the centre one hundred sixty-two feet, and the slope one to one, the excavation in a thorough cut between the points which are now the ends of the tunnel would be 813,920 cubic yards. By using sharp curves the depths of cutting might have been reduced to fifty-four feet at the ends, and one hundred feet in the centre, or thereabouts. On such a line, with a slope of one to one, the excavation would be 386,400 cubic yards. The approaches would be additional, and would be the same in all the cases. If the rock were hard enough in the case of the last line, (with short curves,) to stand a slope of one half to one, the excavation would be 220,435. This, too, is estimating it only 1,300 feet to get through. If the short curves were used, the length of the cut would be increased thirty to fifty feet, and the excavation would of course be more. The cut with these sharp curves would not be so valuable, and a road with a thorough cut would in no event be as valuable as with a tunnel, for the reason that the slopes of a one hundred or one hundred and sixty feet cut would cover a broad expanse, and in a rain storm a large body of rain would fall in there, and, running down, make a torrent through there that would make it almost impossible to keep a track there. In winter the snows would fill up the cut to great depth.

Question. Do you know how the prices in Mr. Chamberlain's contracts compare with those in other contracts let at or about that time, within a season or two, taking into account all circumstances then existing?

(Objected to by Mr. Lynde as irrelevant and immaterial.)

Answer. The only contracts that I know of to which I could compare them, (having been let about that time,) are those of the La Crosse Company with Mr. Cleveland, and Mr. Chamberlain's prior to contract with that company. I was engineer when Mr. Cleveland was acting under his contract with that company. Taking the appearance of the works in the two contracts at the time they were taken, I should have estimated that Mr.

Cleveland's contract would yield the greatest percentage of profit. I do not speak of the way that the work proved, but as it appeared at the time it was let, and as it would have been sublet for at that time. I have made a calculation of the two, putting them both upon an equal basis, estimating from the appearances at the time of making the contracts, and have computed the cash cost of the work. On Cleveland's contract I have made the following estimate:

Earth excavation, 218,000 cubic feet, at 25	54,500 00
Hard pan, 20,000 c. y., at 30 c. extra	6,000 00
Cross-ties, 7,000, at 20c	1,400 00
Government duties, $66,000	66,000 00
Bridging and culverts	3,000 00
688 Frogs and switches	1,000 00
Chairs and spikes, 342,500 lbs., at 4½	15,412 50
Track-laying, 46 miles, at $300	13,800 00
Estimate cost of work	161,112 50

Amount to be paid for above work, $336,453. $336,453 divided by $161,112 50 is $208, showing a profit on Mr. Cleveland's contract of 108 per cent. Deducting 20 per cent. discount on his securities, leaves 67 per cent. profit on Mr. Chamberlain's contract. I estimate the cash cost:

Earth excavation, 20,000 cubic yards, at 25c	$5,000 00
Ties, 2,400, at 20c	480 00
Masonry and bridging	1,500 00
Chairs and spikes, 10,000 lbs., at 4½	450 00
Track-laying	300 00
Cash cost per mile	7,730 00

Showing a profit of fifty-five per cent. These estimates are made from the appearances of the work to be done at the time the contract was made. I have estimated the amount (in Mr. Chamberlain's contract) of earth work at 20,000 yards per mile, because everybody then supposed that there would be more than that. The only profile then in existence showed much more than that.

MONDAY, 4 *October*, 1858.

By taking time engineers can generally make a very good approximate estimate of the amount of work done after it is completed. There might be cases—as, for instance, in a sink-hole—where they could not come anywhere near the true amount. It would not be likely to be perfectly accurate in any case. It would be extremely difficult to classify work when excavations are opened; the material, on exposure to the weather, often changes.

You could not ascertain the amount of ballasting without having the measurement of the pits from which the gravel was taken, or you must have the original surface of the pits and then measure them. Mr. Woodward and I were engaged in our measurement between two and three week's hard work and constant application. It would have taken us, having a party of three or four, from two to three months of well-applied time to have made such an approximate estimate, not having the original field-notes or other papers.

Cross-examined.

FRIDAY, 29 *October*, 1858.

I am not now engaged upon any road. When employed to make this re-estimate I was not engaged upon any road, but was attending to my
689 business at La Crosse. There was not, to my knowledge, any person employed by Mr. Cleveland, or any other creditor, to take part with me in that re-estimate, nor, so far as I know, any notice given to Mr. Cleveland, or any other creditor, to be present.

The statement (Schedule C) is the estimate of the work which had been done up to October 1st, 1857, as near as we could get at it. Men were working between New Lisbon and Tomah when we were making our estimate. The track was then laid, I think, about ten miles beyond the forty-three miles mentioned in our statement.

I had no means of telling what work had been done before October 1st, 1857—what work after that, except the appearance of the work, and the assurances of those with whom I was associated. We could not, of course, tell from the appearance of the work whether work had been done in the middle of October or before the first of October. I relied substantially upon the statements of my associates. Some of the work, however, indicated plainly that it had been done before the preceding winter. I understood, as I have already stated, that there was a little track to lay to make up the 43 miles. I am not now able to give the items for which we make the deductions named in the statement. I think a good portion of the amount was for ballasting. I think but little was to be done to complete the grading and track-laying. We were engaged between two and three weeks in making the surveys and re-estimates over most of the work. I compared the field-notes and profiles with the work itself. I did not measure every excavation and embankment, but wherever there was any apparent discrepancy between the field-notes and the appearance of the work I examined them carefully, and made the necessary measurements.

We were engaged only about eight to ten days in the field in making the actual surveys and measurements; we spent about half of that time, or a little more, say five days, on the 43 miles, I should think. I could not tell what proportion of the embankments in that 43 miles was actually measured. I was usually content, when I came to an embankment, if it was of full width and apparently of full height, with making two or three measurements to satisfy myself of the accuracy of the field-notes, and that the quantities mentioned in the field-notes were really there. If you measured two or three points, and found that the embankment was of the right height and width, such points being two or three hundred feet apart, you could with the eye readily detect any serious discrepancy between the work done and the field-notes. I could not say that we actually made such measurements in every case; there may have been some slight embankments where I made no measurements; in some I satisfied myself with measuring the height only. I started with this idea, that I must look at the thing closely enough so to satisfy myself that there had been no collusion between the contractor and the engineers. The statements made to me by them I endeavored to compare by the appearance of the work itself. The work from Portage City to a point four or five miles this side of Kilbourn City I did not examine so minutely as the rest of the work, because they had been completed a year or more, and I relied more on the field-notes along there; still I there made such examinations as satisfied me that they were substantially
690 correct. I made memoranda in the field-books of the assistant engineer when I found any variations. I took those notes with me, and when I found them correct I made no memoranda; when I found variations I

made in them the memoranda. I made no other memoranda of our examinations.

On reflection, I now recollect that we did have other memoranda. The tunnel work, and all west of that, we kept in a different way. I don't know what has become of those memoranda. I do not know whether I gave them to anybody. I did not count them of any particular value after I had completed my estimate and report. I may have them in my office in La Crosse. I have some papers there. I don't remember when I saw them last.

The profile is the surface of the ground and the grade lines put on to a scale. It marks the line to be graded, and the natural surface as it is. Only the centre line is given, not the side lines. It is the centre longitudinal section of the road.

The field-notes made before the contract is let are the original field-notes from which the profile is made. I did not have those. They would be of no use to me, so long as I had the profile. I had the working field-notes of the assistant engineers. The working field-notes contain the depth of cutting or filling at the centre and slopes, with such intermediate depths as are necessary to show the original surface of the ground, the distance of the slopes from the centre, and the quantity contained in each station or half station, (depending, of course, upon how often they have taken the cross-sections.) Cross-sections are the measurements taken of the depth and width of the cutting or filling, showing the appearance and dimensions of a transverse section of the work. The field-notes show you everything, in short, necessary for calculations. Whenever the suface departs from a plane, the field-notes show the height or depth and other dimensions of the new grade. When you come to rock cutting the assistant engineer should, after the rock is stripped of the earth, take a second set of field-notes, showing the cross-sections of the solid rock. We could not test perfectly the centre line of the road. Still, if the ground was level on each side of the road, we should naturally infer that the surface was level where the road lay. We could measure accurately the outer slopes. The inner line was matter of estimate from the general appearance of the ground. It is the same thing with excavations and embankments.

If there is between slope stakes a great elevation or depression, you cannot fully test the accuracy of the centre line. It is just as likely to be a plane in an excavation as in an embankment. It is just as likely to be irregular in one as in the other. In most instances you can trust to appearances to a great extent. If between slope stakes there is a mound or a gully, the slope stakes would not of course show the work done, and you would have to rely upon the field-notes. So if the road went through the centre of a mound or ravine, you could not exactly ascertain the height or depth of the centre, except from the field-notes.

But the surface of a hill is as likely to be a plane as a level surface. The country from Portage City to New Lisbon is a plane surface gener-
691 ally, except a few miles about Kilbourn City. Taking into consideration the whole surface of the grounds, I think it possible that there might have been an error of five per cent. in the field-notes which we could not have detected. I do not think that there was any error. I do not remember who made the original field-notes and profile.

When a survey is made, the man who runs the line usually keeps the minutes of survey, the courses, and distances. The person who takes the level puts down the heights and depths on profile paper. He puts down the surface of the ground on profile paper. The notes of those measurements constitute the original field-notes. These we did not need, because the field-notes of the assistant engineers embrace all those and a good deal more. I do not, of course, mean to swear that the original field-notes were correctly

given—the working field-notes which we had. They were there, but I cannot say that they correspond with the original field-notes.

The original field-notes would not show the grade. I cannot recollect precisely how many miles of track to be laid are included in the items of "deductions" in our report.

My impression is that it was not over four miles, but that is merely an impression. I cannot tell how much the item of ballasting was. My impression is that there had been but little ballasting from Manston to New Lisbon, seven or eight miles. This side of Manston, also, there was a portion of the road which had only a little ballasting. Such was the state of the road in March last, and such, I understood, had been the case in October before. I cannot state the gross amount deducted for ballasting. I cannot state now more particularly as to the amount of ballasting yet to be done.

The road was to be divided into three divisions of about 34 miles each. A section is a portion of the road, usually about one mile; sometimes a little more, and sometimes a little less. I observed in our survey the nature of the ground. I could not say upon how many sections the material for ballasting might be found. There might have been five or six sections. There might possibly have been more, but I don't think there were; I did not examine particularly with a view to ascertain that. I could not now tell, but I should think that there was but little of the road between Portage City and New Lisbon where the surfacing or ballasting had been thrown up from the sides. I did not keep this in my mind all the time, but I should have noticed it if it had been so. I remember a few instances of that kind, and but few. You could only ascertain that state of things by the appearance of the materials.

Whenever the materials on the sections might have been so used they were so used, or at least should have been so used. I should think, from the appearances, that from Portage to Kilbourn City most all the ballasting had been hauled on by the train; from how far I cannot say.

I don't remember how much of the ballasting from Portage City to Kilbourn City we estimated had been done by October, 1857; I think from three quarters to seven eighths; perhaps all. In making our deductions
692 we estimated some portions of the grading in the neighborhood of New Lisbon as having been unfinished in October, 1857; also some of the embankments near Kilbourn City were rather narrow, and deductions were made for those.

I could not now say how many yards we estimated as deduction. In estimating the value of the grading, ballasting, and track-laying, and the other matters included in the "deductions," I intended to charge Mr. Chamberlain the full price which he got by his contract, and even something more.

Question. In estimating the amount to be allowed for any given number of yards of grading ascertained not to have been done, how did you get at the amount which should be allowed to the company according to the terms of the contract?

Answer. I have stated that we did not get at the number of yards particularly, but that we lumped that, intending to put on a price that would fully cover the deficiency. We made an estimate on that point as we went along, at prices something greater than Mr. Chamberlain was to receive. He contracted to build the road from Portage to La Crosse. He was to do the grading, bridging, and masonry, and furnish ties, chairs, and spikes, and lay the track for $12,000 per mile. After the line had been surveyed, and profile and estimates made, we found there were about so many yards of grading to the mile; I forget now how many, but I think 14,000 or 15,000

as it proved. We estimated as near as we could the cost of the grading, of the bridging and masonry, of the ties, chairs, and spikes, and of the track-laying per mile, which was less in the whole than $12,000 per mile.

We then estimated the actual cost of the grading of the line, and thus got the average cost of the grading per mile, which I think we estimated at about $3,800 per mile, although I am not sure.

The cost of bridging and masonry I think we estimated at somewhere from $1,400 to $1,500 per mile; ties were $500 or $600; track-laying from $300 to $350; chairs and spikes from $500 to $700; making a gross sum of, say, $6,500, leaving a balance for profit; adding to the cost of each item as above a proportionate amount for profit, and we have the basis of contract price for each item as we estimated.

The bridge at Kilbourn City was not included in Chamberlain's contract, as I am aware. I do not know whether the divisions were precisely equal to each other in length. We did not take them much into account in making up our estimate.

Question. How many bridges are there between Portage City and Kilbourn City?

Answer. I do not know of any except a pile bridge, which was extra. There are some culverts, and pretty large ones.

I could not tell the cost of the pile bridging between Portage City and Kilbourn City. I should think about two thousand dollars.

Between Kilbourn City and New Lisbon there are a number of bridges. I do not now recollect how many. I could not tell how much they cost. I don't think we made a particular estimate of the cost. We made a relative estimate of their number and character in comparison with the num-
693 ber and character of those yet to be done. I have not now any recollection of the number and character of the bridges between Portage and Kilbourn City from which I could make even an approximate estimate *estimate* of their cost. I am not sufficiently familiar with them to do that.

I can't now tell the value of the masonry between Portage and Kilbourn City. There were some culverts at Kilbourn City, but I have not now any definite idea of the cost and extent of them.

I did not see them there before the first of October, but I am very well convinced that they were there, because the earth could not have been put over them between October and March. I cannot now tell where the culverts were.

There are culverts all along the line of any railroad. There must be a culvert under almost every embankment.

I remember some, particularly at Kilbourn City, where there were several deep fills.

I cannot tell what was the average grading from Portage to New Lisbon. It was more than the average from Portage to La Crosse. I think it was more than 16,000 yards per mile. I should think not more than 18,000 yards per mile. My impression is that it was about 18,000. I may be mistaken, as I have no data whatever. The average of the first division west of Portage (34 miles) would rather exceed 18,000 yards, I think, say 500 yards, as the grading from 34 to 43 miles west of Portage was rather light work. A part of the grading mentioned in the item of grading, bridging, and masonry, $151,000 and odd dollars, (the third item,) was the excess of the average quantity from Portage City to New Lisbon. A part was between New Lisbon and Tomah, (18 miles from New Lisbon.) A part was at and near the tunnel, and there was work scattered along the La Crosse Valley. I mean by the excess, that if he had contracted to build 100 miles, and that had proved to contain 100,000 yards, and he had built 40 miles and done half

the grading, then he would have done an excess of grading in proportion to the number of miles completed. The excess on the 43 miles is the excess of work done on that piece over 43,100 of the whole work. We did not, in estimating that excess, deduct the amount of cubic yards of solid rock and loose rock excavation, that I remember, from the gross amount of the grading on the 43 miles.

The bridging was done all along where the grading was done. I think, in making up the "extra" item of grading, bridging, and masonry, we took in none of the bridging within the 43 miles; it was all west of that, I think.

I don't remember that there were any bridgas complete west of the 43 miles.

There were some culverts; they come in under the head of bridging.

I could not tell how many culverts; there might have been ten or twenty. The entire item is, I know, chiefly composed of grading. We made no actual measurement of the culvert work and masonry, any further than comparing the amount of work done with the work which remained undone. I have no present recollection of the amount or cost of the work done.

As to the fourth item, extra haul, we found this all along the line
694 from Portage to La Crosse. I should presume that two thirds, perhaps three quarters, was between Portage and New Lisbon. As near as I can recollect, it averaged about the same all along from Portage to La Crosse, in proportion to the amount of work that had been done. We got at the amount of extra haul from the profile and from the statements of the resident engineers, Howell and Staughton, that the earth from the excavation had been deposited on those embankments, and from the appearance of the earth, that such had been the fact. I don't think we measured the borrowing pits for the purpose of getting at the amount of ballasting; I think we measured them for the purpose of getting at the grading. The most extensive borrowing pits were at Kilbourn City, and they were the principal ones.

There were several along there within a space of two or three miles, where the country is pretty level, and there has been a borrowing pit. A measure of the embankment will indicate the amount of work done; but where there is a side-hill cut, or the earth has run off into the water, it is necessary to measure the borrowing pit or excavation. The earth from the excavation was principally but not all used in filling, I think. I don't recollect any instance of earth being wasted except at the tunnel, and there we did not attempt to distinguish between earth which had been wasted and that used in embankment. I think the longest haul was between 1,800 and 2,000 feet; I did not keep the memorandum, although we made one, in regard to the distance and amount of the extra haul; Mr. Staughton had it here. This work was principally done east of New Lisbon, as I understand, before the 1st of October. West of that point, at least west of the Red Mills, (three or four miles west of New Lisbon,) there had been but little work done, as I understand, by the 1st of October, especially from the Red Mills to Tomah. From Tomah to La Crosse the work stood just as it was the 1st day of October, 1857, as had been represented to me, and as appearance would indicate. I have no doubt about it, although I cannot swear to it. From New Lisbon, about ten miles west, the road was being run for construction purposes in March, when we made our examination. I got my information as to the amount of work that had been done on the 1st of October from Messrs. Howell, Staughton, and Woodward.

As to the solid rock excavation, I think that was all east of New Lisbon. I remember, now, there was a small cut west of the tunnel.

We got at the amount of the rock excavation by actual measurement. I don't now remember the amount west of the tunnel. It was a small cut,

not exceeding 3,000 yards. I relied to a small extent on the field-notes for data, and only to a small extent. The surfaces of the cuttings were in a good many instances decomposed. I did not take the field-notes as correct, until I had dug with a shovel in beyond the action of the frost, and satisfied myself of the amount of the solid rock work. The field-notes appeared to indicate a greater amount of that work than had actually been done; but such examination satisfied me that they were generally correct in that respect, and I had very little occasion to make any alteration in their figures.

695 The rock was sand rock, of different degrees of hardness. That was the prevailing character of the rock. I consider this sandstone. It is rock which, being exposed to the weather, becomes sand. It is different from the sandstone used in building. There is no slate about it; some of it was in layers; most of it was in masses or in thick layers. It is not all laminated, although some is. I made memoranda of those measurements. I don't know where these are. I suppose they are in existence. As to the loose rock excavations, I took them from the reports of the assistant engineers entirely.

As to the roadway bridges, there was one at Portage City, that is, over the road. There is one at Kilbourn City, under the road. These were the principal ones. There were others which I don't now remember. I think the bridge under the road was allowed at some six or seven thousand dollars. The other one, I think, at some four or five hundred dollars. Such is my present recollection. I did not make a very close estimate of the number of yards in the largest bridge. It was returned to me, and I satisfied myself that the amount was about correct. Then Mr. Woodward and I fixed a price. The work was stone. We deducted from the estimated cost of the bridge the estimated cost of a culvert which it would have been necessary to put there, and allowed only the excess.

As to cattle passes, in the same item, I don't recollect particularly about them. They were all east of Red Mills.

As to changing highways, a highway was changed for some distance near Kilbourn City. It was necessary to grade a new one for some distance, instead of constructing a bridge either over or under. I don't now remember how much that cost, but my impression is it was about a thousand dollars.

I mean by "excavation of foundations," in the next item, excavations for the foundations of the bridges, culverts, &c. I did not investigate that matter a great deal. I took the engineer's returns for that. No man can tell, after the bridges are up, the amount of excavation for the foundation and the timber in it. I made some examination of the bridges in reference to this item. I considered, from what I knew, that the amount of work reported had been done, and the timber reported had been put in. I could not ascertain more certainly than I did.

As to the bank wall, most of it is at Kilbourn City. I think there was a very little two or three miles west of there also. It was mostly in one place, I think. It is near the tunnel culvert. I did not measure those walls myself. I had to take the amount from the return of the assistant to the chief engineer. You could not measure it, nor make an approximate measurement. You could not tell the thickness. Some of it went down under the water You could not, when I saw it, measure the superficial surface of it. It was mostly covered with earth and water. I don't remember particularly about it. I know that there was part of a wall there. I don't know whether all was there which had been built, or whether a part had been carried away. I did not try to measure the bank wall, for I could not do it.

I saw but very little of a bank wall. I don't know that I saw 100 square feet. I satisfied myself by the engineer's statements that the
696 amount reported had been put in. I don't know now whether it had given way or not. I found there had been a good deal of bank wall put in which had failed.

From Portage to Kilbourn City the country is generally open, not heavy timbered; some is marshy; some with openings; some is sandy, in the neighborhood of Portage especially.

There is considerable timber near Kilbourn City—a belt three or four miles wide. We would call that oak openings; still it approaches the character of a forest. Beyond there, towards New Lisbon, the country is lightly timbered. It is oak openings. From New Lisbon to the tunnel it is marshy, with tamarack and pine—what you would call heavily timbered. This commences about four miles beyond New Lisbon. I don't know that the grubbing of tamarack is any more difficult than other species of timber. From the tunnel to Sparta it is a heavy gray pine country. From Sparta to La Crosse the country is very lightly timbered, in some places prairie. The distance from New Lisbon to the tunnel is, I think, twenty-four miles. I think it is twelve miles from the tunnel to Sparta, and from there to La Crosse is twenty-six miles. I should think one third of the grading from Portage to Kilbourn City consists of simply throwing earth from the sides to the centre, what is technically called side work. I don't think, on reflection, that one third of it is side work.

The work near Kilbourn City, this side, is very heavy. There is heavy work for about five or six miles on both sides of Kilbourn City. The earth is there obtained from excavations and borrowing pits; the cuts and fills are not unusually long there.

There was some rock excavation near Manston; some west of the tunnel, but principally within the five or six miles near Kilbourn City. To know the amount of grubbing and clearing which had been done by the 1st October, 1857, I had to rely on the statements of the engineers.

I measured myself the tunnel approaches; the number of yards stated in our report was the result of our measurement. I don't recollect of deducting anything for work done since the 1st October; the approaches were not complete; a portion of the excavation there was sand and a portion of it sand rock. I could not now tell what was the proportion of each, as we did not attempt to classify it—possibly a third of the quantity might have been sand. Sand rock is sometimes blasted; I have never seen a blast made there; no work was being done at the tunnel when I was measuring there. I have never seen that rock worked; when exposed to the atmosphere it becomes coarse white sand; I don't think I relied entirely on the statement of the engineers that the work had been done before the first of October; the work itself showed that it had stood through the winter; the common report there was that the work had been stopped before first October; the price, $2 per yard, we took from the contract. The pile bridging was between Portage and Kilbourn City; there were some two or three pile bridges there; I could not now tell how extensive they were; when we saw it there was only water there; I should presume it would take 16 feet piles, but I don't know; I don't recollect how we allowed the cost, whether by the pile
697 or by the foot; we estimated what we thought the cost, but whether by the foot or by the pile I don't now remember; I presume by the lineal foot. I do not remember any of the items connected with that; we got at the value of the tunnel culvert at Kilbourn City from the reports of the engineers of the labor expended there; that was my only source of infor-

mation; I did not particularly examine it; I did not measure the work myself of grading at Kilbourn City; I took the notes of the engineer who had measured it, and satisfied myself that they were right; I don't recollect the price we allowed per yard.

I only know the amount of the damages for detention and change of line at New Lisbon, because the engineer told me that Mr. Chamberlain had been obliged to pay that amount; I did not notice particularly the point where the change was made.

I was engaged in engineering from 1844 to 1856; I never was connected with Mr. Chamberlain; I don't know that I have ever had anything to do with Mr. Chamberlain's work until I made this re-estimate, except that some ten years ago I made the final estimate on some work he had done in Vermont.

I was engineer on the road when Mr. Cleveland took his contract; the soil on the portion of the road included in his contract was clayey; I think about a quarter of it was hard pan, but I don't recollect certainly; his contract embraced about thirty-three miles of grading, I think, including the finishing of work previously commenced; he was to pay duties on the iron, not exceeding $66,000; he was to lay track to Rock River, from a point about seven miles from Milwaukee. I think I should rather take out the sand rock than the hard pan; I think the surface of the country from Milwaukee to Rock River is much more rough than that west of Portage; I could not say how much grading Mr. Cleveland performed, how much he paid out for duties, nor how much he received from the company; I cannot recollect anywhere near the amount of any estimates on the road; I recollect that for work done and money paid he was estimated 208 per cent., or 2 18-100 times the estimated cash disbursements or cash cost of doing the work; I recollect being a witness on the trial of the suit of Mr. Cleveland against the railroad company; I do not recollect how much I then stated the hard pan could be taken out for; my impression would be that I stated it at fifty cents.

Re-examined.

When I was making the re-estimate, the monthly estimates previously made were not before me. The information furnished me by the engineers was corroborated by the appearances of the work.

W. R. SILL.

A.

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE R. R.,
Milwaukee, October 1st, 1857.

Estimate of work done by Selah Chamberlain, contractor, on the eastern division of the La Crosse and Milwaukee Railroad under his contract for ballasting that portion between Beaver Dam and Portage City, from commencement to date :

698	Ballasting 192, 542 yards, at 40c	$77, 016 80
	To this is to be added for filling in the bank at Fox Lake	20, 768 65
	Total estimate	97, 785 45

I hereby certify that the above estimate is correct.

E. W. WOODWARD, *Chief Engineer.*

OFFICE OF THE LA CROSSE AND MILWAUKEE R. R. CO.,
Milwaukee, Wis., Sept. 29th, 1858.

I certify the preceding to be a true copy from and the whole of the original on file in this office.

LOCK. H. DOTY, *Secretary.*

C.

To the board of directors of the La Crosse and Milwaukee Railroad Co.:

GENTLEMEN: We, the undersigned, having been appointed to make new estimates of the work done up to October 1st, 1857, on the line of your road from Portage City to La Crosse, by Selah Chamberlain, under contract, dated January 20th, 1857, and April 30th, 1857, and also under certain stipulations for ballasting the same, respectfully report that, in accordance with a contract made on the 8th day of December last for a remeasurement of the work done on that portion of the road, we have carefully examined each of the several items of work performed, aided by the original notes and cross-sections of the work, and by such new measurements and examinations as were necessary to correctly estimate their value of the work performed under and in accordance with the stipulations of the above-named contracts, and the following is the result, viz :

43 miles main line, as per contract, at $12,000 per mile		$516,000 00
2 32-100 miles side track		27,840 00
Grading, bridging, and masonry, proportionally equal in value to		151,900 00
Extras per contract on earth hauled over 500 feet		27,537 30
Grubbing and clearing, (proportional,) at $300 per mile		18,620 00
Solid rock excavation, 118,557 c. yards, at 75c		88,917 75
Loose rock excavation, 2,400 yards, at 50c		1,200 00
Roadway, cattle passes, bridges, and changing highway, extra		11,700 00
Excavations of foundation and timbers in same		6,500 00
Bank wall, 3,500 c. y'ds, at $3 per c. y'd		10,500 00
Tunnel approach, 73,957 3-10 c. y'ds., at $2 per c. y'd		147,914 60
Pile bridging		2,500 00
Tunnel culvert at Kilbourn City		2,300 00
Ballasting 45 32-100 miles, at $2,000 per mile as per stipulation		90,640 00
699 Grading depot grounds at Kilbourn City		973 20
Damage for detention and change of line at Kilbourn City		1,121 00
		1,106,163 85
Deduction for work unfinished at that time, but estimated in above, being track-laying, ballasting, and grading		62,000 00
		$1,044,163 85

(Signed) WM. R. SILL, *Civil Engineer.*
(Signed) E. W. WOODWARD, *Chief Engineer.*
Milwaukee, March 25th, 1858.

D.

ENGINEER'S OFFICE LA CROSSE AND MILWAUKEE R. R.,
Milwaukee, Oct. 1st, 1857.

Estimate of work done by Selah Chamberlain, contractor, on the western division of the La Crosse and Milwaukee railroad, between Portage City and La Crosse, from the commencement to the present date.

43 miles of main line completed between Portage City and New Lisbon, as per lease, at $12,000	616,000
2¼ miles side track with above, $12,000	27,000

Grading and masonry equal to 9½ miles, at $10,000	96, 000
Extra on earth hauled over 500 feet	41, 400
Grubbing and clearing 80 miles, at $300	24, 000
Solid rock excavation, 118,250 y'ds, at $1	118, 250
Loose " " 2,400 " 75c	1, 800
Roadway and cattle-passes	11, 700
Excavations of foundations, and timber for same	6, 500
Bank wall, 3,500 y'ds, at $3	10, 500
Tunnel approach excavation, 6,400 y'ds, at $2	128, 000
Pile bridging	2, 500
Tunnel culvert at Kilbourn City	2, 300
Ballasting 45¼ miles, at $2,000	90, 500
Total estimate	$1, 076, 450

I hereby certify that the above estimate is correct.

E. W. WOODWARD, *Chief Engineer.*

OFFICE OF THE LA CROSSE AND MILWAUKEE R. R. Co.,
Milwaukee, October 1st, 1858.

I certify that I have compared the preceding estimate with the original on file in this office, and that the same is a true copy therefrom, and of the whole of said original.

LOCK. H. DOTY, *Secretary.*

700 E.

Copy of E. W. Woodward's memorandum of grubbing and clearing:

Total No. of stations of considerable timber	1, 002
Total No. of stations of scattering timber	767
Total	1, 769
Total length of grubbing done in heavy timber	304
Total length of grubbing done in light timber	240

To be done Oct. 1, 1857:

Total No. of stations of considerable timber	417
" " " scattering "	501
Total grubbing to do in heavy timber	54
" " " light "	79

F.

Copy of E. W. Woodward's memorandum of extra haul :

Between sta.	24	and	50,	18,000 yds.,	1,100	ex. W.	$1,980 00
"	78	"	108,	9,200 "	1,300	"	1,196 00
"	58	"	70,	820 "	400	"	32 80
"	140	"	156,	1,265 "	500	"	632 50
"	212	"	252,	8,000 "	1,000	"	800 00
"	315	"	345,	8,200 "	700	"	570 00
"	345	"	375,	3,650 "	600	"	219 00

Between sta.	435	and	460,	800	yds.,	700	ex. W.	56 00
"	465	"	503,	3,500	"	800	"	280 00
"	610	"	647,	7,500	"	1,000	"	750 00
"	659	"	694,	4,600	"	600	"	276 00
Between sta.	745	and	779,	21,000	yds.,	1,800	ex. W.	3,780 00
"	780	"	810,	18,000	B,	300	"	540 00
"	813	"	824+50,	10,000	P B,	400	"	400 00
"	824+50	"	845,	11,200	yds.,	1,000	"	1,120 00
"	845	"	888,	22,000	"	700	"	1,540 00
"	892	"	905,	4,200	"	400	"	168 00
"	904	"	931,	10,000	"	600	"	600 00
"	950	"	971,	8,000	"	600	"	480 00
"	975	"	982,	3,000	"	200	"	60 00
"	985	"	1,025,	18,000	"	300	"	540 00
"	1,061	"	1,079,	4,000	"	600	"	240 00
"	1,099	"	1,125,	13,000	"	1,500	"	1,950 00
"	1,134	"	1,156,	6,500	"	900	"	580 00
"	1,158	"	1,180,	4,500	"	1,200	"	540 00
"	1,188	"	1,260,	400	"	500	"	200 00
"	1,292	"	1,310,	1,000	"	700	"	70 00
"	1,325	"	1,340,	2,000	"	300	"	60 00
"	1,432	"	1,448,	1,200	"	700	"	84 00
701 "	1,490	"	1,620,	11,000	"	1,200	"	320 00
"	1,524	"	1,544,	5,000	"	900	"	450 00
"	1,590	"	1,610,	2,000	"	700	"	100 00
"	1,641	"	1,663,	1,200	"	1,100	"	131 00
"	1,665	"	1,684,	2,600	"	500	"	130 00
"	1,685	"	1,708,	800	"	600	"	48 00
"	1,710	"	1,735,	1,100	"	500	"	55 00
"	1,940	"	1,952,	3,000	"	200	"	60 00
"	1,985	"	2,000,	3,000	"	500	"	150 00
Between sta.	2,030	"	2,050,	2,500	yds.,	400	ex. W.	100 00
"	2,110	"	2,175,	9,500	"	1,800	"	1,610 00
"	2,250	"	2,273,	2,200	"	500	"	110 00
"	2,300	"	2,340,	1,250	"	1,000	"	125 00
"	3,435	"	3,460,	3,000	"	600	"	180 00
"	3,480	"	3,500,	3,000	"	700	"	210 00
"	3,480	"	5,000,	.....		.....		3,014 00
Total.....				.....		.....		27,537 30

SATURDAY, 6 *November*, 1858.

Moses Kneeland, being duly sworn, says:

[The defendant Chamberlain produces a contract dated 20 January, 1857; the tunnel modification thereof attached thereto, dated 30 April, 1857, of which modification a copy hereto annexed, marked H; a contract dated 20 November, 1856; one dated 26 September, 1857, being the lease, so called; and another contract of the same date, copies of which are attached to the answers, or to some of them, filed in this cause. The execution of the papers is admitted, except as to the tunnel modification, in regard to which the complainants' counsel admits the genuineness of the signatures of Selah Chamberlain and Edwin H. Goodrich.]

Edwin H. Goodrich was vice-president of the La Crosse and Milwaukee Railroad Company on the 30th day of April, 1857, when the tunnel contract

here produced was executed. I did not see the contract executed. I referred to the meeting of the executive committee. I left the next day after that meeting. In April, 1857, the executive committee of that company was composed of Byron Kilbourn, Edwin H. Goodrich, Garret Vliet, Samuel Brown, and myself. The subject of making a contract for the tunnel was considered in the executive committee in the last days of April, 1857. Mr. Goodrich, Mr. Vliet, and myself, Mr. Woodward, and Mr. Chamberlain were present. The executive committee directed a tunnel to be made. I could not tell you all the details. One particular point as to the price arose. The price per yard for tunnel work was the principal thing under discussion. I recollect there being talk about the sinking shafts, packing, and anchoring; but there was more discussion on the tunnel work itself.

These prices named in the modification contract were the prices agreed upon. They were the prices named in his proposition for the original contract. We then thought we should not have to tunnel it, but Mr.
702 Kilbourn, and Mr. Woodward made up their minds that a tunnel would be necessary, and Mr. Kilbourn wrote in to Mr. Goodrich to that effect. Mr. Goodrich called the executive committee together. Mr. Woodward had a sort of an estimate. He had estimated the tunnel work at $3 a yard. Mr. Chamberlain said he could not do it for that, and would not take it. I asked Mr. Woodward how that estimate was got up. He said by him and Mr. Kilbourn, when they were out at the tunnel. That they did not include any profit. Mr. Chamberlain wanted $6 a yard We proposed in the discussion to add to the estimate $1 a yard, making it $4 a yard. He finally said that his last and best proposition would be $5 a yard for the tunnel work under his old proposition. I think the executive committee were in session two days. We advised about it with Mr. Woodward, and finally deemed it advisable to take that offer. There was a good deal of discussion as to what material might be in the ridge, whether shell rock, or openings in the rock, or something else. We agreed, finally, upon the price named in the contract, $5 per yard in consideration of the risk he took in the material.

The executive committee passed a resolution ordering the contract to be entered into. I should consider this as substantially the contract or deed to be executed. I think these are the prices agreed upon. I never saw the tunnel modification contract before. The executive committee directed Mr. Goodrich to execute the contract.

When the contract was made with Mr. Chamberlain in January, 1857, for completing the road to La Crosse, he submitted a proposition for doing the work. Mr. Cook (C. D. Cook & Co.) also submitted a proposition.

Question. Whose was the best?

(Objected to, as immaterial.)

Answer. Mr. Chamberlain's. The principal difference was in chairs and spikes, which Mr. Cook did not propose to furnish. I think his proposition was $11,900 per mile without the chairs and spike. Chamberlain's included the chairs and spike. Then there was a difference in what we call a drawback in the rock and earth work in Chamberlain's, and there was none in Cook's proposition. I think also that Cook's haul was less than Chamberlain's. As a whole, Chamberlain's was the best propositon for the company, I thought. I had no interest in Chamberlain's contract, either for the tunnel or for the western division.

(Mr. Brown, complainant's counsel, objects to the testimony of this witness, on the ground that he is charged by the bill with being interested in Chamberlain's contract, and on the ground that he is interested therein.)

Cross-examined.

I have been connected with the La Crosse road since the winter of 1854,

January or February, 1854, and before that with the Fond du Lac road, from the organization of the Milwaukee, Fond du Lac, and Green Bay Railroad Company.

703 I think I was one of the committee who negotiated the consolidation of the Fond du Lac and La Crosse companies.

Question. How much stock did you have in the Milwaukee, Fond du Lac, and Green Bay Railroad Company four months prior to the consolidation?

(Objected to, as immaterial.)

Answer. I don't know precisely how much I had.

Question. Did you increase the amount of stock you held four months prior to the consolidation, up to the time of consolidation?

(Objected to, as immaterial.)

Answer. I presume I did.

Question. Did you ever become the owner of one hundred shares of stock issued to Cook or *or* Cook and Sherwin?

(Objected to, as immaterial, so far as Chamberlain is concerned, and incompetent as to the other defendants.)

Answer. I think I did.

Question. From whom did you receive the certificates of stock?

(Objected to for the same reason as before, and also that it is not proper cross-examination.)

Answer. I think I received them from C. D. Cook. It was either from him or James Kneeland. I think from C. D. Cook.

Question. How did you receive it?

(Objected to, for the same reasons.)

Answer. From one of them personally.

Question. What consideration did you pay for it? and when and how?

(Objected to, for the same reasons.)

Answer. I will produce Messrs. Cook & Sherwin's receipt in answer to that question. The body and signature are both in the handwriting of C. D. Cook. This receipt was actually given on the day it bears date, the tenth of October, 1853. At the time of taking the receipt I gave him some money and my due bill for the balance. I paid him in all six thousand dollars in money for that stock. I think he made me an allowance out of that for a service I performed for him. I went out to Madison and got a bill through for him. I think, however, the principal part was money. The going out to Madison was in connection with the consolidation bill. That was in January, 1854, I think. He allowed me, I think, about $200 or $300 for going out to Madison. I think I paid him about $1,000 in money, and about $5,000 in my due bill; I don't remember exactly. I don't recollect whether I paid him in bills or a check. I think there was a $400 check, and the rest was in bills. I think the check was on Townsend & Finkler. It must have been there, or Kneeland & Hull's. I can't tell how I paid the remaining $5,000 for which I gave my due bill. This paper, marked G, is a true copy of the receipt I have mentioned. [Paper produced, marked G, and hereto attached.] I did not know at the time I received that stock that James Kneeland owned that stock, or that C. D. Cook neither owned nor claimed any interest in it.

704 I was informed by James Kneeland that he had a contract with Mr. Cook to cash the securities, but I think it was after that date. I think I first saw Mr. Selah Chamberlain to know him in the fall of 1854. I was in the board of the La Crosse company, which gave him and Alden his contract the first time. I was in the board at the time they declared Mr. Cleveland's contract void.

(All the testimony subsequent to the answer of the last question is objected to, for immateriality, and is taken subject to that objection.)

I know James Ludington, one of the defendants in this suit.

Question. Do you recollect the fact of a sale of school lands made by him to the La Crosse Railroad Company some years ago?

(Objected to, as immaterial and incompetent.)

Answer. I understood there was such a sale. I was a director at the time, and so was he. I think I did not vote for the purchase, and did not know anything about it at the time. I could not state how much the board gave him for them. I can't state. I have no knowledge whether any other persons than Ludington were interested in the purchase of those lands from the State, or in the sale of them to the company. I think this was about 1854, but I am not positive. I did not have much to do with the company then. I afterwards became the owner of some of those school lands, about eleven hundred acres, in Crawford County. I understood from Dr. Judd, the president, the price, but I do not know otherwise. I gave for the company's interest in the land 123.74 acres of land in Racine County, free of incumbrance, worth about $2,000 at that time. I do not know who is now the owner of that land, but I suppose the company is. I do not remember the description of it. These are all the lands purchased from the company Some of them may be in Bad Axe County. Mr. Dawes purchased quite a large amount of those lands. A man in Hartford took some. A man in Ohio, Mr. Whittemore, took some in payment of a debt due him. Mr. Mariner took some. I think they were all sold or exchanged for other lands. I don't know that any other director bought any. I think E. C. K. Garvey bought some, and Crampton also. When I took mine the understanding was that I might exchange them for others that I should select, but before I got a chance to make the selection they were nearly all sold.

(The foregoing evidence, since the last question, is all taken subject to the defendants' objection for immateriality.)

I don't know that I at first favored Cook's proposition any more than Chamberlain's. I don't think that just previous to a meeting of the board, or during such meeting, Mr. Alden asked me to go out and talk with him.

Question. Do you know, either of your own knowledge or from any facts or circumstances, whether Mr. Chamberlain gave to any member of that board, directly or indirectly, any gratuity, sum of money, or thing, either in action or possession, either as a recompense for having aided him or
705 as an inducement to aid him in getting that contract, or for any consideration growing out of that contract.

(Objected to, as irrelevant and immaterial, and not proper cross-examination.)

Answer. I don't know that I have any knowledge or recollection of any such transaction.

Question. Has any director of the La Crosse Railroad Company to your knowledge had any interest, direct or indirect, either in the contracts which Chamberlain had with that company, or in any of them, or in the profits of such contracts, or in the results or moneys received from such contracts?

(Objected to, for the same reasons.)

Answer. None to my recollection. I don't believe there was any.

Question. Have you yourself ever been the owner of any note, bond, or other security; or have you had in your possession any note, bond, or other security issued or given by the La Crosse Railroad Company under or in pursuance of any contract with Chamberlain?

(Objected to, for the same reason.)

Answer. That is a pretty broad question. I don't know what bonds, stocks,

and such things he might have had at some stage. I don't know but I have had such, and I don't know that I have.

Question. Have you ever received from him or from Mr. Goodrich anything of that nature issued to him under any of those contracts?

(Objected to, for the same reasons.)

Answer. I don't think I have, nor from any other person.

Question. Have you ever yourself, directly or through the agency of a third person, sold or disposed of any stocks, bonds, notes, or other securities issued by the company under the contract with Chamberlain?

(Objected to, for the same reasons.)

Answer. I can't say. I might or might not. I have no recollection of it now.

Question. Do you recollect the last report made by the company before the land grant?

Answer. I think there was a report made in the spring previous to the land grant, and one afterwards. I think the report previous to the land grant was got up by Messrs. Kilbourn and Strong. I cannot say whether I as director voted for it. I presume the report represented, according to my understanding, the situation of the company at that time. I recollect that after the land grant a report was also made about January, 1857. I presume I voted for the report, but I can't say whether I did. I presume it then represented the condition of the company, as I then believed. I recollect I then thought the appraisal of the lands too high, but I had no knowledge about them. I can't say whether the change in the contract with Chamberlain in regard to a tunnel was reported to the board; I have no recollection about it; I was away. On reflection, I wish to correct my statement as to Kilbourn and Woodward's estimate of the cost of the tunnel work. I think it was $3 50 or $3 75, instead of $3. Mr. Woodward reported the price.

Mr. Kilbourn was then at St. Paul. Mr. Woodward was appointed chief 706 engineer of the road in February or March, 1857, according to my best recollection. He was first employed as a division engineer, immediately after procuring the grant. I don't think he was engaged on any road when we appointed him. I don't think he was appointed at Chamberlain's instance. I think it was at Farwell's instance. I dont know whether or not he had ever been on a road which Chamberlain was connected with. I think Mr. Woodward, after he was appointed chief engineer, had charge of the western division of the road. Before that Mr. Kilbourn was chief engineer, and before that Mr. Sill.

Question. What amount of the bonds of the company, after the land grant, were issued to persons not directors of the company, and what amount to each director?

(Objected to, as irrelevant and immaterial.)

Answer. I can't say that any issue was made to outside parties or directors. I can only say that a million of bonds were issued for charter expenses, for right of way, depot grounds, and other expenses. I don't think any were issued to directors or others. I think the executive committee appropriated, of bonds of that issue for services and endorsing the company's paper, &c., to Charles E. Jenkins $25,000, to Moses M. Strong, to Edwin H. Goodrich, and Moses Kneeland, each $25,000. This is all that I recollect. The bonds that I received were received for extra services and to apply in part payment for indorsing and bonding iron for the company. Those bonds are now in the hands of the company cancelled, and have been for some time. I suppose I returned them some time last winter. I have now a claim against the company for indorsing for it, and bonding its iron. There was before that time an appropriation to me in stock of $2,000 or

$3,000 on account for indorsing. My account against the company is over $40,000.

I have, I think, been on over three millions of paper for the company. I was not here when the judgment was entered in favor of Chamberlain; I was in New York. I think I was here at the time of the purchase by the company, of Kilbourn, of what was called "the canal lots;" I think that was in 1856; I may be wrong, but that is my recollection. I don't know that I can state the amount; I think it was $50,000 or $60,000; it may be more, it may be less. I think I was in the board at the time that the $50,00 were voted to Mr. Kilbourn. It was passed by the board.

I never, to my recollection, stated to Frederic J. Gates, of Albany, after the judgment was entered in favor of Chamberlain against the La Crosse Railroad Company, that the whole amount of it was not due to Chamberlain from the company, or anything to that effect.

I have been on all the bonds of the company for all the iron from Milwaukee to La Crosse.

MOSES KNEELAND.

E. W. Woodward.

Interrogatory. What is your profession?

Answer. I am a civil engineer. I reside in Warren County, Ohio. I have been engaged in that profession thirteen years. I was chief
707 engineer of the La Crosse railroad from Febrnary, 1857, to October 1st, 1858. I know of Mr. Chamberlain, one of the defendants, having contracts on that road. The contract on the eastern division was for ballasting between Beaver Dam and Portage City. That on the western division was for the entire construction, with the exception of the iron rails, which were to be furnished by the company. As chief engineer I estimated the work done by him on the eastern division, under his ballasting contract. There is a copy of the estimate, now shown to me, and marked "A." This is the final estimate, and shows, besides the ballasting proper, the allowance made by engineer and the executive committee for pile bridging at Fox Lake, and afterwards filling in the same with earth. The work estimated in the final estimate was performed by Mr. Chamberlain. There was a sink-hole at Fox Lake which required a large amount of earth to fill in. As chief engineer, I made monthly estimates of Mr. Chamberlain's work on the western division. I made an approximate final estimate on October 1st, 1857. I now hold a copy of that final estimate here; it is marked "D;" it was made at the request of Mr. Palmer, who was then, I believe vice-president. This request was made by him, I should think, about four days previous to 1st October, 1857.

What directions did Mr. Palmer give you at that time?

(Objected to by Mr. Finch, solicitor for complainant, as irrelevant and immaterial.)

Mr. Palmer told me to make an estimate as accurately as I could in the time given to me, and by all means keep it within the amount performed. Mr. Palmer, at a second interview, charged me the same thing again. I proceeded and made the estimate upon such returns as had previously been made by assistant engineers and my own knowledge and condition of the road. Those returns and my own knowledge of the work at the time were not and could not well be sufficiently recent to enable an engineer to make an approximate estimate, the work being carried forward so fast at that time that very few days would suffice to materially change the amount of work performed.

I intended the estimate to be a little below the amount of work performed, and I think it really was so; subsequent examinations have confirmed me

in this belief. The item in Exhibit "D," of excavations at the tunnel approaches was erroneous, for this reason: A very heavy force of men was at work then at the time, and the amount forwarded me by the assistant engineer as done was so much larger than that about a month before, that I was afraid to trust it in making an estimate under the instructions I had received from Mr. Palmer; subsequent careful examinations, however, have shown that the estimate was very much too small. I have since made a re-estimate of all the work done in this estimate of October 1, 1857, marked "D," or the work intended to have been included therein. The railroad company appointed Wm. R. Sill to make, with the assistance of myself, a re-estimate of all such work. We proceeded to make the re-measurements and estimates, with the aid of all the field-notes and cross-sections connected with the work. We went over the line re-measuring carefully all
708 items of any considerable amount, and those of lesser amount were tested and compared by the notes in the construction books. In some instances Mr. Sill was obliged to rely upon my statements as to where and how much the work was done on October 1st, 1857. These statements made to him were in every instance correct.

(The witness is now here shown by defendants' counsel a paper, marked "C," and proven 1st October, 1858, before Winfield Smith, master and commissioner.)

Witness continues: This paper "C" is the duplicate original return made by myself and Mr. Sill, and shows the result at which we arrived; it shows the amount of work done by Mr. Chamberlain up to October 1st, 1857, and the prices under the contract; in relation to the rock and extra haul an explanation should be made. The earliest approximate estimates, made from the profile of the road, justified the belief that the quantities would exceed the limit per mile named in the contract, and the contrary to this was not ascertained until after the making up of the estimate, dated October 1st, 1857. Much work having been done by the chief contractor, Mr. Chamberlain himself, and which was not estimated monthly so carefully as was the work of his sub-contractor, will show the reason why precise knowledge was not had of this matter at the time Had the quantities exceeded the limit, the contract price for the work then would be one dollar per yard. Upon full, final examination the quantities were found to be very little below the limit of the contract; therefore seventy-five cents per yard was the price to be allowed for the rock. The estimate for haul of October 1st, 1857, was also larger than it should have been; for while the quantities were believed to be above the limit of the contract it was the determination of the engineer to consider all excavations as being into embankment, and to deduct a like amount of embankment from the gross number of yards of work performed in accordance with the stipulation in the contract, and thereby avoid, as far as possible, excess of earth work, for it was cheaper for the company to pay for its being hauled than to pay the price per yard for excess of earth work.

Upon ascertaining that the quantities were really a little below the limit, I, as engineer, assumed that the contractor should be paid for nothing but what was actually hauled of five hundred feet; upon this basis the Woodward and Sill estimate is true and correct.

The item of grading, bridging, and masonry, proportionally done beyond New Lisbon, in the estimate dated October 1st, 1857, was very much too small; it was the intention to keep it pretty low, and this way of arriving at that item was very materially changed upon advice and mature deliberation.

In the approximate estimate of October 1st, this item was arrived at by comparing the work done between New Lisbon and La Crosse with work to

be done between the same points. The estimate of Sill and Woodward comprises the work done between New Lisbon and La Crosse, and finds the proportion that bears to the work on the entire line included under the contract. This was, no doubt, the proper way of ascertaining the proportion of work done, for it at once establishes a pro rata value of the work performed.

709 Some of the smaller items of extra work, such as road and farm crossings, bridges, cattle passes, and changing highways, the excavations of foundations and timber in same, were such as no one could well understand the real value of, except in charge at the time of construction. Mr. Sill had to rely, in a great measure, upon my assurances in relation to them. The estimates for these items I know to be not more than a fair value for the work; the item for "bank wall" is correct; I know this from my personal measurement.

The original contract between Mr. Chamberlain and the company contemplated a through cut at the dividing ridge. We, the engineers, found that to make a tunnel would be much cheaper. Upon informing the company of this fact, Mr. Kilbourn proceeded with me to the dividing ridge, and it was then determined by him to build a tunnel; and being on his way to St. Paul's he wrote a letter to Mr. Goodrich, who, I believe, at that date was vice-president. The letter was carried to Mr. Goodrich by myself. It contained instructions from Mr. Kilbourn to Mr. Goodrich to get the executive committee together and change the contract accordingly; it had also recommendations what prices to pay—that is, about what he thought it ought to be done for. I have forgotten the precise prices, but recollect that when Mr. Kilbourn showed them to me I said to him that no one who had ever made a tunnel would take it for those figures. Upon the executive committee applying to Mr. Chamberlain I believe he refused to *to* the work at the price mentioned in Mr. Kilbourn's letter. I went before the executive committee; Goodrich, Kneeland, and Vliet were present, the latter during the most if not all the time. They mentioned to me what Mr. Chamberlain offered to do the work for, and asked me what I thought of it. I told them there was risk about all that kind of work; that the tunnel price was low, considering all risks; that the approach price was high; I think, also, that I said if they could not get it at any lower to let him do it at that price. While with the executive committee I heard Mr. Kneeland speak of *of* an original bid made by Mr. Chamberlain for tunnel work, should one be required, and said he did not believe that he could get Mr. Chamberlain to do it below that bid. The contract was let to Mr. Chamberlain immediately following this.

Taking the entire tunnel contract, I think it was at a good round price; it was doubtless something more than the work would really cost. I have seen contracts let at a higher price, and good many at a lower price. Tunnel contracts are very risky contracts. The change from through cut to a tunnel was a great saving to the company. It is my opinion that it would be a saving of hundreds of thousands of dollars.

At the time of making the estimate of October 1st, there was an estimate also made for unfinished work east of New Lisbon. This was furnished the company in connection with the other estimate. Here is a copy of that estimate, which I now hold, marked "D."

Cross-examined by Mr. Finch.

I have known Mr. Chamberlain since 1851; I think I have never

710 been in his employ at all; I have acted as engineer upon one road where he had a contract. I have been as intimate with him so far as engineer and contractor on the same road, whose business brings them together.

Since the commencement of this suit I have asked Mr. Chamberlain concerning it. I have not had frequent conversations with him relative to the subject-matter of the suit; he mentioned to me that he wanted me as a witness; he first mentioned this soon after the commencement of this suit. I don't think he ever stated the facts or subject-matter which he expected to prove by me; no one in his behalf has ever talked with me except his counsel; I think Mr. Emmons called me three times in all, and gave me some points whereon he expected my testimony.

I met Mr. Emmons but once before I made the affidavit filed in this case. I don't know that he specially directed my attention to facts, but inquired whether my estimates could be substantiated and explained by detailed explanations and notes. I don't remember that he called my attention to special points; I think he had my estimates before him at some of those conversations; I don't remember any particular items to which he called my attention. At our first interview I think he had no other than the estimate of 1st October, marked A. I don't recollect that Mr. Emmons called my attention to any items on that estimate, but I told him that changes would have to be made in it; this was a few days before my affidavit was made.

In March, 1858, Mr. Sill and I were appointed a remeasurement; it may have been in April.

Mr. Palmer gave me no reasons why that remeasurement should be particularly accurate; he told me to be sure and be within the amount, but gave me no reasons. I had at that time the profiles of the road in my possession as chief engineer. I have not seen the profiles for four or five months; when I last saw them, part of them were in the company engineer's office at Milwaukee, and part of them Mr. Staughton had in his possession on the line; the consist of twelve or fifteen small rolls of thick drawing paper; they are not labelled, except in pencil from point to point where they reach. I drew part of them myself, and superintended the getting up of all of them; these profiles referred to are the profiles of the western division; I think I never saw the profiles of the road from Beaver Dam to Portage City. In making up the estimate signed by Sill and myself we used the original field-note books, the cross-section notes and our own through remeasurement notes of rock excavation, tunnel approach excavation, and comparison notes to test field-notes; we made this estimate upon the strength of all these notes. We completed this estimate, I should think, about the 20th March, 1858. Mr. Staughton had the field-notes and papers, from which estimate was made, in his possession. Mr. Palmer called on me three or four days before the first of October. On the first of October, 1857, about five or six miles of the road was wholly completed beyond Kilbourn City; we did not measure actually the distance, but knew it, without measuring, from the section stakes which were driven. It is about seventeen miles and a half from Portage City to Kilbourn City. It is about twenty-five
711 miles and a half from Kilbourn City to New Lisbon. We estimated forty-three miles of main line. The track had not been laid more than five or six miles beyond Kilbourn City.

Portions of the land between Portage City and Kilbourn City were quite level, say about one half; the rest was more rolling, some of it pretty rough; there was some very heavy work between the two places; we had no cut over forty feet; they were short cuts; where the heavy cuts were the soil was clay; there was considerable haul at several points; I could not say how far it would average. We got at the estimate examination on the ground, and used the profiles; we got at the amount of haul by looking and seeing. Without the original notes of the excavations from whence the earth was taken, and some observation and knowledge of the way in which the work was performed, it would be very hard to make an accurate estimate of

haul. By the original notes I mean the level notes of the line of location, division books, and cross-section notes.

Almost constant observation of the work as it was done is the basis from which I would make the estimate of the haul. If the field-notes and the note books were not correct the estimate for haul would not be accurate. I cannot, from recollection, state the points at which the haul occurred. My prinpal office was at Milwaukee.

I was out upon the line of the road nearly all the time. I was on the line between Kilbourn City and Portage City during the progress of the work; at work of any importance as often as once or twice a week, and sometimes stopped on a few miles of the work for a whole week. There was much ballasting done between Portage City and Kilbourn City. There was not of material suitable for ballasting but a small portion of the distance along the line. The chief use of ballasting is on account of frost, to get good bed of the right kind of material. The character of the soil between these points was sandy—soil inclining to quicksand.

There was a good deal of grubbing between Portage City and New Lisbon, at different points; none of it was the heaviest grubbing. Most of it was done in the vicinity of Kilbourn City—the most of it. I have seen heavier grubbing than that was. I can only state the grubbing was heaviest on the eastern half of the road.

The grubbing on the whole line of the road might be called only middling

The rock excavation was between Portage and New Lisbon; it was done in the summer and fall of 1857. The points *were* it occurred are particularly specified in the schedule accompanying my affidavit filed in this cause.

I, as chief engineer, superintended. The division engineers (two in number, Mr. Staughton and Mr. Howell) had a more immediate charge of setting stakes and taking levels. The work was chiefly done under the immediate management of certain sub-contractors, most of whose names I do not now recollect. It was sandstone excavations. I make no distinction between sandstone and sandrock; a piece of loose rolling sandstone of great age is probably somewhat harder than its parent rock. It was pretty easy working this sandstone. I could not tell how much was averaged a day on the work.

They could not take it out without blasting. It was a very good
712 easy rock to move. We had actual notes of each cut, and width, and height of rock taken out. These notes were taken firstly by the division engineers; afterwards I measured each cut myself.

We take first the grade of the road at each hundred feet station; we take the cutting at the centre line on each of these stations. We take the side distances, the width of the work out from these centre stations, and the cuttings at the points so measured too; these are sufficient to make full calculations of the number of yards. I took these measurements myself. They were taken at various times, occupying on the whole, I should suppose, as much as two weeks of connected time. In making the estimates of Mr. Sill we took such notes as would quickest test the accuracy of former notes; if any inaccuracy, however slight, was found we would then make a thorough measurement of the cut, which actually amounted to a remeasurement of the whole work. We had the estimates and books of the sub-engineers who were there at the time.

The bank wall referred to by me was built near Kilbourn City, within the city. It was of sandstone. A bank wall, which contained 2,750 yards of the amount estimated, was built at the deep gorge near Kilbourn City, the bottom of it some few feet deep in the river; the embankment of clay was placed against it. The embankment was 90 feet high. After a rain it split in the middle. 20,000 yards of embankment, together with the bank wall, slid into the Wisconsin River.

I took measurements of the bank wall enough to know that the measurement was correct; I cannot remember its dimensions, but the amounts were ascertained, of course, by calculations from its length, breadth, and thickness. I saw two men measure its length and breadth before it was done.

Filling at Fox Lake.

I don't know who superintended the building of the pile bridge at Fox Lake. There is an item of twenty thousand dollars or upwards in the estimate, which is for building the pile bridge at Fox Lake, and filling in earth at the same place where the bridge sunk. There had never been any allowance for building the pile bridge. Much of the filling was done in the winter, and large quantities of stone were hauled, costing a greater than a usual price for hauling, and at a meeting of the executive committee the matter was brought up. I stated then as near as possible the amount and character of the work; the committee decided to make the allowance named, and instructed me to enter it with the ballast estimate.

We never knew just how deep the *the* mud was; thirty-five feet piles were gone out of sight. It would be impossible to tell how many thousand yards were put into the sink hole; much of it was taken from points that could not be measured in the winter; many train loads of frozen earth were blasted and hauled in. I was up there perhaps twice a week. I made no general estimate of the filling in at Fox Lake. The item of $20,000 and a little upwards for extra work was allowed by the executive committee, under the circumstances, as I have before stated.

713 The length of the tunnel is little more than a quarter of a mile; the height is 19 feet, about. I could not tell how much was taken out of the tunnel. I left Mr. Staughton to close up the work.

I got at the estimate of the approaches by cross-sections, taken in the same manner as was mentioned in the case of rock. Mr. Staughton made the profile along there and the original surveys.

In making estimates I relied chiefly on field-notes and cross-sections.

The extra work is chiefly the rock tunnel approaches and haul. Most of the papers, notes, &c., are in the railroad office, in Milwaukee, I believe.

Where I have stated in my direct examination as to circumstances of which I informed Mr. Sill in making our estimates, I relied upon our field notes and profiles and general knowledge of the work.

Nearly all of the field-notes were taken by the assistant engineers.

Monthly estimates of the work done are usually returned by the assistant engineers to the chief engineer. Upon those returns the general monthly estimate is made.

I know that the work that purports to have been measured as work done before the first of October was done before that time, and no part of it has been performed since.

We had the line staked off into 100 feet distances, with a stake at the beginning and end of every cut. These are all numbered, and by their position we can at any time, ascertain the position of any portion of the work.

Re-examined by Mr. Emmons.

In the item at Fox Lake pile bridge there is included and covered a former two thirds estimate of piling alone of near $5,000, which, if charged to him in his account with the company, would make the $20,000 and upwards item correct,

Further this deponent saith not.

EZEKIEL W. WOODWARD.

EXHIBIT No. 30.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the third day) of January, A. D. 1859. Present: The Honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-first day of said term, to wit, on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Selah Chamberlain. } In equity.

This day came the parties by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, it is thereupon or-
714 dered, adjudged, and decreed by the court that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property, (except such as is used on the Milwaukee and Watertown division of said railroad,) and leased to said Chamberlain their said railroad and appurtenances, rights, franchises, and privileges, be, and hereby is, vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever. And that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling, or meddling with said railroad or the rolling stock, personal property, or any of its appurtenances, or franchises, or anything connected therewith, under or by virtue of said article of agreement.

And it is further ordered, adjudged, and decreed by the court that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company, entered in this court on the second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon, be, and hereby are, vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

And it is further ordered, adjudged, and decreed by the court that the said defendant, Selah Chamberlain, pay the costs to be taxed, so far as they accrued in this proceeding against him; and that he pay the same within twenty days, or, in default thereof, an execution be issued against him for the same.

And as the lease and assignment of the said company to D. C. Freeman has expired by its own limitation, it is further ordered, adjudged, and decreed by the court that the defendant, D. C. Freeman, pay the costs to be taxed, so far as they accrued in this proceeding against him, within twenty days, or, in default thereof, an execution be issued against him for the same.

And it is further ordered, adjudged, and decreed by the court that the La Crosse and Milwaukee Railroad Company pay the costs to be taxed, so far as they accrued in this proceeding against it, within twenty days, or, in default thereof, an execution be issued against it for the same.

And it is further ordered that reference be, and hereby is, made to a mas-

ter of this court to ascertain and report the annual income of the several lots described in the bill as having been conveyed to Moses Kneeland and James Ludington, from the time of their said purchase, together with a statement of the interest thereon. And also to ascertain and report the amount of the actual cost of permanent improvements made on said lots by said Kneeland and Ludington, together with interest thereon; and also the amount of liens and taxes on said lots that have been paid by said Keeland and Ludington, or by C. D. Nash for them, together with interest on the same.

715 And that this bill be retained for further decree and proceedings after the coming in of said report.

It is ordered by the court that in case of appeal by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supersedeas shall be given and filed with sufficient sureties, to be approved by the court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

EXHIBIT No. 31.

State of Wisconsin, circuit court, Milwaukee County.

Judgment docket.

Names of persons against whom judgment is rendered: The La Crosse and Milwaukee Railroad Company.

Names of persons in whose favor judgement is rendered: Newcomb Cleveland.

Place of abode of judgment debtor: Milwaukee Co.

Damages and costs: $3,718 60.

Time of docketing judgment: Judgment docketed April 20, A. D. 1859, at 11 o'clock a. m.

Names of attorneys of the persons in whose favor judgment is rendered: Matt. H. Carpenter.

STATE OF WISCONSIN,
Circuit court, Milwaukee County, ss:

I, Wm. H. Jacobs, clerk of said court, do hereby certify that I have compared the foregoing with the original "docket" now of record in my office, and that it is a correct transcript therefrom and of the whole thereof, in a certain action wherein Newcomb Cleveland, plaintiff, and the La Crosse and Milwaukee Railroad Company, defendant.

Damages and costs, three thousand seven hundred and eighteen dollars and sixty cents ($3,718 60.)

In testimony whereof, I have hereunto set my hand and affixed
[SEAL.] the seal of said court, at Milwaukee, this 17th day of September, A. D. 1861.

WM. H. JACOBS, *Clerk*,
By W. L. CLEAVER, *Dep.*

EXHIBIT No. 32.

State of Wisconsin, circuit court, Milwaukee County.

Judgment docket.

Names of persons against whom judgment is rendered: The La Crosse and Milwaukee Railroad Company.

Names of persons in whose favor judgment is rendered: Newcomb Cleveland.

716 Place of abode of judgment debtor: Milwaukee Co.

Damages and costs: $1,525 71.

Time of docketing judgment: Judgment docketed April 20, A. D. 1859, at 11 o'clock a. m.

Names of attorneys of the persons in whose favor judgment is rendered: Matt. H. Carpenter.

STATE OF WISCONSIN,
Circuit court, Milwaukee County, ss:

I, Wm. H. Jacobs, clerk of said court, do hereby certify that I have compared the foregoing with the original "docket" now of record in my office, and that it is a correct transcript therefrom and of the whole thereof, in a certain action wherein Newcomb Cleveland, plaintiff, and the La Crosse and Milwaukee Railroad Company, defendant.

Damages and costs, fifteen hundred and twenty-five dollars and seventy-one cents ($1,525 71.)

In testimony whereof, I have hereunto set my hand and affixed
[SEAL.] the seal of said court, at Milwaukee, the 17th day of September, A. D. 1861.

WM. H. JACOBS, *Clerk*,
By W. L. CLEAVER, *Dep'y*.

EXHIBIT No. 33.

State of Wisconsin, circuit court, Milwaukee County.

Judgment docket.

Names of persons against whom judgment is rendered: The La Crosse and Milwaukee Railrod Company.

Names of persons in whose favor judgment is rendered: Sebre Howard.

Place of abode of judgment debtor: Milwaukee County.

Damages and costs: $25,586 78.

Time of docketing judgment: Judgment docketed May first, A. D. 1858, at 12 o'clock m.

Names of attorneys of the persons in whose favor judgment is rendered: Levi Hubbell.

STATE OF WISCONSIN,
Circuit court, Milwaukee County, ss:

I, Matthew Keenan, clerk of said court, do hereby certify that I have compared the foregoing with the original "docket" now of record in my office, and that it is a correct transcript therefrom and of the whole thereof, in a certain action wherein Sebre Howard is plaintiff and the La Crosse and Milwaukee Railroad Company is defendant.

In testimony whereof, I have hereunto set my hand and affixed
[SEAL.] the seal of said court, at Milwaukee, this eighth day of May, A. D. 1858.

MATTHEW KEENAN, *Clerk*.

717 EXHIBIT No. 34.

District court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a special term of the district court of the United States of America for

the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the fourteenth day) of November, A. D. 1859.

Present: The Honorable Andrew G Miller, judge of said court, presiding; John H. Lewis, marshal; John M. Miller, clerk.

Among other the following proceedings were had, to wit:

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

Be it remembered, that heretofore, to wit, on the 28th day of October A. D. 1859, came Sebre Howard, by his attorney, Mr. Hubbell, and filed his precepi for a summons against the La Crosse and Milwaukee Railroad Company, as follows:

U. S. DISTRICT COURT, *Wisconsin district:*

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

Please issue a writ of summons in the above-entitled action, in favor of the plaintiff and against the defendant in a plea of debt for fifteen thousand four hundred and sixteen dollars and 87 cents, which the said defendant unjustly withholds from the plaintiff to his damage twenty-five hundred dollars, and make said writ returnable on the first Monday in November, 1859. Dated Oct. 26, 1859.

Yours, &c.,

LEVI HUBBELL, *Pl'ff's Att'y.*

To JOHN M. MILLER, Esq., *Clerk, &c.*

Whereupon a summons was issued as follows:

THE UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

[SEAL.] You are hereby commanded to summons the La Crosse and Milwaukee Railroad Company to appear before the district court of the United States of America for the district of Wisconsin aforesaid, at Milwaukee, on the first Monday of November ensuing, then and there to answer unto Sebre Howard in a plea of debt. Debt fifteen thousand four hundred and eighteen dollars and eighty-seven cents, which the defendant unjustly withholds from the plaintiff, to his damage two thousand five hundred dollars, which shall then and there be made to appear, and of this writ make due return.

718

Witness the Honorable Andrew G. Miller, judge of the said district court of the United, at the city of Milwaukee, in the said district of Wisconsin, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth.

LEVI HUBBELL, *Attorney.*
J. M. MILLER, *Clerk.*

And on or before the return day of said writ came the marshal, and returned said writ, with his return endorsed thereon as follows:

"Served on the within-named La Crosse and Milwaukee Railroad Company, by leaving a copy of this summons with Sanford R. Kane, secretary of said company, this 7th day of November, 1859.

"M. J. THOMAS, *Marshal*,
"By D. C. REED, *Deputy*.

"Fees, $2 32."

And afterwards, to wit, on the seventh day of November, A. D. 1859, came the said plaintiff, by his said attorney, and filed his declaration as follows:

United States district court, Wisconsin district.—January term, 1859.

DISTRICT OF WISCONSIN, *ss:*

Sebre Howard, of Elgin, in the State of Ohio, and a citizen of the State of Ohio, plaintiff in this suit, by Levi Hubbell, his attorney, complains of the La Crosse and Milwaukee Railroad Company, a body corporate, duly incorporated and organized under and by virtue of an act of the legislature of the State of Wisconsin, approved April 2d, 1852, and acts amendatory thereof, defendant in this suit, in custody, &c., of a plea that it render to the said plaintiff the sum of fifteen thousand four hundred sixteen and 89-100 dollars, ($15,416 89-100,) lawful money of the Unites States of America, which it owes to and unjustly detains from him. For that whereas the said plaintiff heretofore, to wit, on the first day of May, in the year one thousand eight hundred and fifty-eight, in the circuit court of the county of Milwaukee, in the second judicial circuit of the State of Wisconsin, before the judge thereof, by the consideration and judgment of said court, recovered against the said defendant the sum of twenty-five thousand five hundred eighty-six and 78-100 dollars, part and parcel of which is above demanded, which in and by the said court was then and there adjudged to the said plaintiff against the said defendant for his damages which he had sustained, as well by reason of the non-performance by said defendant of certain promises and undertakings then lately made by said defendant as for his costs and charges by him about his suit in that behalf expended; which said judgment
719 was then and there duly entered and docketed, whereof the said company defendant was convicted, as by the record of said judgment remaining in the office of the clerk of said court in said county of Milwaukee (and a transcript whereof, duly and legally exemplified and authenticated, this plaintiff is ready to produce) will more fully appear, which said judgment still remains in full force and effect, not reversed, satisfied, or otherwise vacated, as to said sum of fifteen thousand four hundred sixteen and 89-100 dollars, and that the said plaintiff hath not obtained any execution or satisfaction of or upon said judgment so recovered, as aforesaid, as to the said sum of fifteen thousand four hundred sixteen and 89-100 dollars, part and parcel thereof; whereby an action hath accrued to said plaintiff to demand and have of and from the said defendant the said of money above demanded.

Nevertheless the said defendant (although often requested so to do) hath not as yet paid the said sum of money above demanded, or any part thereof, to the said plaintiff, but hath hitherto wholly neglected and refused so to do, to the damage of the said plaintiff of twenty-five hundred dollars, and therefore he brings his suit, &c.

LEVI HUBBELL, *Att'y for the Plaintiff.*

And same day, to wit, on the seventh day of November, A. D. 1859, came the said plaintiff, by his said attorney, and entered on the order and rule book a rule on the defendant to plead, as follows:

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY. } Of the first Monday of November, A. D. 1859.

On motion of Levi Hubbell, plaintiff's attorney, ordered, that the defendant plead to the plaintiff's declaration on file by the first Monday of December next, or its default will be entered.

LEVI HUBBELL, *Plaintiff's Attorney.*

And afterwards, to wit, on the seventeenth day of November, A. D. 1859, came the said defendant, by its attorney, Mr. Carpenter, and filed its plea, as follows:

Plea.

District court of the United States for the district of Wisconsin.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY
ads.
SEBRE HOWARE.

And the said La Crosse and Milwaukee Railroad Company, defendant in this suit, by Mat. H. Carpenter, attorney, comes and defends the wrong and injury when, &c., and says that there is not any record of the said supposed recovery in the said declaration mentioned remaining in the circuit
720 court for Milwaukee County, State of Wisconsin, before the judge thereof, in manner and form as the said plaintiff hath above in this said declaration alleged.

And this the said defendant is ready to verify. Wherefore said defendant prays judgment if the said plaintiff ought to have and maintain the aforesaid action thereof against the said defendant.

MAT. H. CARPENTER, *Att'y Def't.*

And afterwards, to wit, on the twenty-fifth day of November, A. D. 1859, came the said plaintiff, by his said attorney, and filed his replication as follows:

Replication.

United States district court, Wisconsin district.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

And the said plaintiff, as to the said plea of the said defendant by him above pleaded, says that he, the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said defendant, because he says that there is such a record of such a recovery of judgment remaining in the said circuit court of the county of Milwaukee and State of Wisconsin, before the judge thereof, as he, the said plaintiff, hath above in his said declaration in that behalf alleged. And this he, the said plaintiff, prays may be inquired of by the country. And the said defendant likewise, &c.

LEVI HUBBELL, *Pl'ff's Att'y.*

And afterwards, to wit, on the ninth day of said term, to wit, on the

twenty-eighth day of November, A. D. 1859, the following proceedings were had, to wit:

Trial.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY. } At law.

This day the issue herein came on to be tried by the court, and was submitted by the counsel. Whereupon the court doth now, upon inspection of the record, find that there is such a record in manner and form as the plaintiff hath herein declared on.

721 *Judgment.*

And it is considered and adjudged by this court now here, that the plaintiff do have and recover of the defendant, the La Crosse and Milwaukee Railroad Company, sixteen thousand three hundred and fifty-eight dollars and four cents, debt and damages, together with twenty-one dollars and eighty-two cents, his costs about his said suit in this behalf by him expended, and that he have execution therefor.

Judgment roll signed November 28th, A. D. 1859.

J. M. MILLER, *Clerk.*

Debt and damages	$16,358 04
Costs	21 82
	16,379 86

Judgment roll filed Nov. 28th, 1859, at five o'clock p. m.

J. M. MILLER, *Clerk.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this twenty-seventh day of January, in the year of our Lord [SEAL.] one thousand eight hundred and sixty, and of the independence of the said United States the eighty-fourth.

J. M. MILLER, *Clerk.*

EXHIBIT No. 35.

State of Wisconsin, circuit court, Milwaukee County.

Judgment docket.

Names of persons against whom judgment is rendered: The La Crosse and Milwaukee Railroad Company.

Names of persons in whose favor judgment is rendered: Lawrence G. Graham and Donald D. Scott.

Place of abode of judgment debtor: Milwaukee County.

Damages and costs: $11,188 15.

Time of docketing judgment: Judgment docketed September 21, A. D. 1858, at 10 o'clock a. m.

Names of attorneys of the persons in whose favor judgment is rendered: Palmer & Stark.

722 STATE OF WISCONSIN,
Circuit Court, Milwaukee County, ss:

I, Wm. H. Jacobs, clerk of said court, do hereby certify that I have compared the foregoing with the original "docket," now of record in my office, and that it is a correct transcript therefrom and of the whole thereof, in a certain action wherein Lawrence G. Graham and Donald D. Scott, plaintiffs, and the La Crosse and Milwaukee Railroad Company, defendant.

Damages and costs, eleven thousand one hundred and eighty-eight dollars and fifteen cents, ($11,188 15.)

In testimony whereof, I have hereunto set my hand and affixed the seal of [SEAL.] said court, at Milwaukee, this 17th day of September, A. D. 1861.

WM. H. JACOBS, *Clerk*,
By W. L. CLEAVER, *Dep'y*.

EXHIBIT No. 36.

State of Wisconsin, circuit court, Milwaukee County.

Judgment docket.

Names of persons against whom judgment is rendered: La Crosse and Milwaukee Railroad Company.

Names of persons in whose favor judgment is rendered: Lawrence G. Graham and Donald D. Scott.

Place of above of judgment debtor: Milwaukee County.

Damages and costs: $29,820 71.

Time of docketing judgment: Judgment docketed Nov. 25th, 1858, at 12 o'clock m.

Names of attorneys of the persons in whose favor judgment is rendered: Palmer & Stark.

STATE OF WISCONSIN,
Circuit Court, Milwaukee County, ss:

I, Wm. H. Jacobs, clerk of said court, do hereby certify that I have compared the foregoing with the original "docket," now of record in my office, and that it is a correct transcript therefrom and of the whole thereof, in a certain action wherein Lawrence G. Graham and Donald D. Scott, plaintiffs, and La Crosse and Milwaukee Railroad Company, defendant.

Damages and costs, twenty-nine thousand eight hundred and twenty dollars and seventy-one cents, ($29,820 71.)

In testimony whereof, I have hereunto set my hand and affixed the seal [SEAL.] of said court, at Milwaukee, this 17th day of September, A. D. 1861.

WM. H. JACOBS, *Clerk*,
By W. L. CLEAVER, *Dep'y*.

723 EXHIBIT No. 37.

District court of the United States of America for the district of Wisconsin.

LAWRENCE G. GRAHAM AND Donald D. Scott *vs.* LA CROSSE AND MILWAUKEE Railroad Company.	Judgment rendered for the plaintiff for the sum of $44,392 32, costs taxed at 20 86. Judgment docketed Jan. 11th, 1860, at five o'clock p. m. Carpenter & Gridley, plaintiffs' attorneys.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the foregoing with the original "docket," now of record in my office, and that it is a correct transcript therefrom and of the whole thereof, in a certain action wherein Lawrence G. Graham and Donald D. Scott are plaintiffs, and La Crosse and Milwaukee Railroad Company is defendant.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this seventeenth day of September, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the said United States the eighty-sixth. [SEAL.]

J. M. MILLER, *Clerk.*

EXHIBIT No. 38.

(Copy.)

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE R. R.,
June 1st, 1857.

Estimate of labor performed and materials furnished in the construction of the western division of the La Crosse and Milwaukee Railroad, by Selah Chamberlain, up to date:

Grading and masonry, 21¾ miles, *a* $10,000	217,500 00
Cross-ties delivered, 15 miles, *a* 800	12,000 00
Extra haul, earth	10,200 00
Grubbing and clearing, 50 miles, *a* $300	15,000 00
Solid rock excavated, 16,700 yds., at $1 00	16,700 00
Roadway and cattle pass	2,525 00
Exca. of foundations	1,150 00
Bank wall, 400 yds., $3 00	1,200 00
Chairs and spikes, 45 miles, *a* $6 00	2,700 00
Tunnel approaches exca., 400 yds., *a* $2 00	800 00
Total	304,075 00
724 Deduct previous estimate	175, 775 00
	128, 300 00
Less 10 p'r	12, 830 00
Am't due	$115, 470 00

I hereby certify that the above estimate is correct.

E. W. WOODWARD, *Chief Engineer.*

(Copy.)

CHIEF ENGINEER'S OFFICE, LA CROSSSE AND MIL. R. R.,
Milwaukee, July 1st, 1857.

Estimate of labor performed and materials furnished in the construction of the western division of the La Crosse and Milwaukee railroad, by Selah Chamberlain, contractor, during the month of June, 1857, in addition to what had previously been done:

Grading and masonry, 7½ miles, *a* $10, 000	75, 000 00
Cross-ties delivered, 15 miles, *a* $800	12, 000 00
Extra haul of earth	9, 200 00
Grubbing and clearing, 20 miles, *a* $300	6, 000 00
Solid rock exc., 24, 500 yds., *a* $1 00	24, 500 00
Roadway and cattle pass, masonry for same	3, 425 00
Exc. of foundation and timber	2, 650 00
Bank wall, 1, 500 yds., *a* $3 00	4, 500 00
Tunnel approach exc, 12, 000 yds., *a* $2 00	24, 000 00
Timber and work in piling	1, 100 00
Total est	162, 375 00
Less 10 pr	16, 237 50
	$146, 137 50

I hereby certify that the above estimate is correct.
E. W. WOODWARD, *Chief Engineer.*

(Copy.)

CHIEF ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE R. R.,
Milwaukee, August 1st, 1857.

Estimate of labor performed and materials furnished in the construction of the La Crosse and Milwaukee railroad, between Portage City and La Crosse, by Selah Chamberlain, contractor, during the month of July, 1857, in addition to what had formerly been done:

Grading and Masonry, 5½ miles, *a* $10, 000		55, 000 00
Extra haul of earth		13, 500 00
	Solid rock excavation, 18,000 yds., *a* $1 00	18, 000 00
725	Roadway, cattle pass, and masonry for same	2, 500 00
	Excavation of foundation, and timber for same	1, 200 00
Bank wall, 500 yards, *a* $3 00		1, 500 00
Tunnel approach, 18,000 yards, *a* $2 00		36, 000 00
Kilbourn City tunnel culvert		800 00
Track-laying, 12 miles, *a* $400		4, 800 00
		133, 300 00
Deduct 10 p'r		13, 300 00
		$119, 970 00

I hereby certify that the above estimate is correct.
E. W. WOODWARD, *Chief Eng'r.*

(Copy.)

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE R. R.,
Milwaukee, Sept. 1st, 1857.

Estimate of labor performed and materials furnished in the construction

of the La Crosse and Milwaukee railroad, between Portage City and La Crosse, by Selah Chamberlain, contractor, during the month of August, 1857, in addition to what had been previously done:

Grading and masonry, 7¼ miles, $10,000	72, 500 00
Extra work hauling earth	6, 500 00
Solid rock excavation, 18,000 y'ds, $1	18, 000 00
Bank wall, 500 y'ds, $3 00	1, 500 00
Tunnel approach, 15, 400 yd's, $2	30, 800 00
Kilbourn City tunnel	400 00
Track-laying, 5 miles, $400	2, 000 00
	131, 700 00
Deduct 10 p	13, 170 00
	$118, 530 00

I hereby certify that the above estimate is correct.

E. W. WOODWARD, *Ch'f Engineer.*

EXHIBIT No. 39.

Meeting of the executive committee of the La Crosse and Milwaukee Railroad Co., held June 3, 1857.

Present: E. H. Goodrich, M. Kneeland, G. Vliet, B. Kilbourn, pres't.

The following estimates were allowed and ordered paid:

S. Chamberlain, western division	$115, 470 00
eastern division	12, 719 60

(Signed) E. P. WHALING, *Sec'y pro tem.*

726 Meeting of the executive committee of La Crosse and Milwaukee Railroad Co., held July 7, 1857.

Present: Mess. S. Brown, G. Vliet, E. H. Goodrich, vice-pres't.

The following estimates presented and allowed, and ordered paid, as per contract:

S. Chamberlain, eastern division, ballasting	19,800 00
S. Chamberlain, western division	146,137 50

(Signed) E. P. WHALING, *Sec'y pro tem.*

Meeting of the executive committee of the La Crosse and Milwaukee Railroad Co., held Aug't 8, 1857.

Present: Mess. S. Brown, G. Vliet, E. H. Goodrich, vice-pres't.

The following estimate presented and allowed paid:

S. Chamberlain	119,970 00

(Signed) E. P. WHALING, *Sec'y pro tem.*

727 Meeting of the executive committee of the La Crosse and Milwaukee Railroad Co., held Sept. 9, 1857.

Present: Mess. S. Brown, G. Vliet, E. H. Goodrich, vice-pres't.

The following estimates presented and allowed:

S. Chamberlain, eastern division, for ballasting	20,804 40
S. Chamberlain, northwestern division, for ballasting	14,300 00
Do., construction	118,530 00

Mr. Palmer presented the following resolution, which was adopted unanimously:

Resolved, That the president and secretary execute and deliver to Selah Chamberlain a warrant of attorney and such other papers as may be neces-

sary to perfect a judgment in his favor against the La Crosse and Milwaukee Railroad Company for $629,089 72, being the amount due him at this date as contractor.

(Signed) J. HADLEY, *Sec'y.*

OCTOBER 1, 1857.

Present: S. Brown, J. A. Helfenstein, J. Hadley, Chas. E. Jenkins, H. L. Palmer, G. Vliet, and Byron Kilbourn, pres't.

Absent: Mess. Goodrich, Hopkins, Strong, and Wheeler.

728 *Decree in western division foreclosure cause.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862. Present: The Honorable Andrew G. Miller, judge of the said court, presiding.

On the sixth day of the said term, to wit, on the thirteenth day of January, A. D. 1862, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPERD Knapp, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace
729 Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, and John Nicholson. } In equity.

This day this cause came on to be finally heard at this term, upon the

bill taken as confessed against the defendants, La Crosse and Milwaukee Railroad Company, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmond R. Persons, Avery Hill, A. V. Rudd, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Edward H. Brodhead, Joshua Hathaway, Charles Quentin, Lawrence G. Graham, Donald D. Scott, The Milwaukee and Minnesota Railroad Company, and Moses M. Davis, and upon the bill and the answers of the defendants, Selah Chamberlain, J. Albert Helfenstein, trustee, in a mortgage or deed of trust of said company defendants, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Burton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Tuft, Jonathan P. Hooper, D. S. Kingore, Noah Sturdevant, William H. Fessenden, John L. Southerland, E. Haskell Derby, Frederick Levick, Charles Shepard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, T. F. Bergen, John J. Vanderbuilt, G. S. Boardman, and John Nicholson. and the replications thereto, and
730 proof, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed by the court as follows, to wit: That the report of Winfield Smith, master, and of Jerome R. Brigham and Increase A. Lapham, special masters, appointed by this court, wherein the sum of six hundred and thirty-eight thousand seven hundred and seventy-nine dollars and seventeen cents appears to be due to said complainants at the date of said report for interest on the bonds in the mortgage mentioned in this bill, numbered from one to nineteen hundred and ninety-one, both inclusive, and one million nine hundred and ninety-one thousand dollars for principal on the said bonds; and also sixty-five thousand three hundred and twenty-one dollars and sixty-seven cents for interest on five hundred and nine of the said bonds included in said mortgage, numbered from nineteen hundred and ninety-two to twenty-five hundred, both inclusive, and two hundred and three thousand six hundred dollars for principal of the sum; and also one hundred and ninety-two thousand five hundred dollars for interest on fourteen hundred and fifty of said bonds of one thousand dollars each, included in said mortgage, numbered from two thousand five hundred and one to three thousand nine hundred and fifty, both inclusive, and on one hundred of said bonds mentioned in said mortgage, of five hundred dollars each, and numbered from one to one hundred, both inclusive, and also six hundred thousand dollars of principal of said bonds—which said several sums of interest, amounting to eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and the amount of principal of said bonds is found to be two millions seven hundred and ninety-four thousand dollars, be, and hereby is, confirmed.

And it is further ordered, adjudged, and decreed by the court that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount due the complainants for principal and interest, and the costs in this cause (and which be sold separately without material injury to the parties interested as hereinafter directed) be sold at public auction, under the direction of the marshal for this district, unless the mortgagor, previous to such sale, pay into court the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and interest thereon from this date, together with the costs in this cause to be taxed.

731 And it is further ordered that said sale be made at the post office, in the city of Milwaukee, within this district and that said marshal give public notice of the time and place of such sale by advertisement published in some newspaper in the city of La Crosse and in the city of New York, once in each week for three months previous to the day of sale, and that the complainants, or the bondholders, or any of the parties to this cause, may become the purchaser thereof; and that the said marshal, after the confirmation of said sale by the court, execute a deed or deeds to the purchaser or purchasers of the mortgaged premises, and that the said marshal bring into court for distribution among the bondholders and other lien creditors, the proceeds of said sale; and that the bonds secured by the mortgage described in this bill may be received in part payment of the proceeds of such sale, in the proportion as each bond at the principal thereof, for the amount thereof, according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

And it is further ordered, adjudged, and decreed by the court that the defendant, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof.

And it is further ordered, adjudged, and decreed by the court that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof, to the extent allowed and granted by the said mortgage.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the bill of complaint in this cause, is as follows, viz:

All and singular the several tracts, pieces, or parcels of land which now are, or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said road, whether now made or to be made

732 hereafter. And all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made or to built and made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been or may hereafter be procured for or used in connection with said roads, or either of them. And also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said road.

Also "all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix River or Lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed; and it is hereby declared to be the intention of the parties to these presents to convey and to vest in said parties of the second part all the property, real and per-

sonal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing act of Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix River or Lake, had already been designated and conveyed to said railroad company."

With forty box-cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 268, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 292, 394, 396, 398, 400, 402, 404, 406, and 408, and such portion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hun-
733 dred and forty-two dollars and sixty-three cents, as the net revenues of the portion of road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to prior mortgages.

And it is further ordered by the court that the said described lands granted by the United States be first sold, and if the proceeds of the sale thereof shall be sufficient to pay and discharge the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, with interest from this date and costs, or if the said sum be released or satisfied or paid into court, further proceedings under this decree shall be stayed. And if, at any time hereafter, there should be any default in the payment of any interest due on said mortgage, or of the sum of two million seven hundred and ninty-four thousand dollars, the principal thereof, when the same becomes due and payable at the time mentioned in said bonds and mortgages, the court may, upon petition of the complainants, or the holders of the said bonds by a further order founded upon this decree, direct a sale of said mortgaged premises, or any part thereof, or of such part thereof as may not be previously sold under this decree, to be made under and in conformity to this decree as aforesaid, for the amount then so due, with the costs of such petition, and the subsequent proceedings thereon; and the same proceedings shall be had as often as a default shall be made.

A. G. MILLER.

Decreed signed, recorded, and enrolled, January 13, A. D. 1862.

J. M. MILLER, *Clerk.*

734 And afterwards, on the 18th day of January, 1862, came the defendant, J. Albert Helfenstein, trustee, in open court, and prayed an appeal to the Supreme Court of the United States. Whereupon it is ordered by the court that his appeal be and hereby is allowed, and that he give bonds with sureties, to be approved by the judge, in the penalty of five hundred dollars, conditioned for the payment of costs.

January 22, 1862. Receiver's report for the month of December, 1861, filed.

January 28, 1862. Ordered by the court that the costs, as taxed in this case, be paid by the receiver, out of funds in his hands, to the clerk of this court.

February 25, 1862. Receiver's report for the month of January, 1862, filed.

March 5, 1862. This day came J. Seymour, B. F. Dawson, Horace Galpin, D. M. Hughes, F. P. James, and Francis Vase, and file their petition in the words and figures following, to wit :

735 *Petition of Seymour, James, and others.*

United States district court, district of Wisconsin.

GREENE C. BRONSON, and others, trustees, *against* LA CROSSE & MILWAUKEE R. R. Co., and others. } Bill of foreclosure land grant mortgage.

The undersigned respectfully show to this court that they are the cestui que trust and holders, in their own right or in trust for others, $3,542,000 of the bonds, which the mortgage now being foreclosed is given to secure, in the following proportions, viz :

Below 1,991	$1, 845, 000
Above 1,991	1, 697, 000
	3, 542, 000

In addition to which we have the signatures of holders of these bonds, by which they obligate themselves to give us the custody and control of the bonds as follows, viz :

Below 1,991	$85, 000
Above 1,991	339, 000
	254, 000

Making the whole amount of right controlled by us $3,881,000 out of $4.000,000.

That as such cestui que trust owners and possessors, in our own right or for others, we respectfully request said court to order a decree that the receiver of the defendant do pay to the holders of said bonds, upon their presentation, the coupons or semi-

736 annual interest due up to and including August 1, 1858, as follows, viz : on such of the $1,000 bonds as are numbered

below 1,992, $35 each ; on the $1,000 bonds numbered from 1,991 to 3,950, $44 for each coupon ; on the $500 numbered from 1 to 100, $7 on each coupon, with the interest on said amounts from August 1, 1858, to the time of payment, in accordance with the judgment of this court, as to the amount of the mortgage lien represented by said bonds.

And if there is a surplus of net earnings of the road, after making the payment as above solicited, then we respectfully request said court to order and decree that the receiver of the defendant do pay to the holders of said bonds, upon their presentation, in the same proportions as above named, the coupons or semi-annual interest due Feb. 1, 1859, with the interest thereon from that time to the time of payment.

And we do hereby agree to credit as a part payment of the amount first above applied for the money paid to our trustees, the complainants herein, as interest, under the orders of this court heretofore made.

And we respectfully request the court to make no more payments of interest to the trustees, the complainants herein, and to
737 hereafter order coupons or parts of coupons to be paid to the bondholders.

And we as cestui que trust above set forth stipulate and agree to abide by the orders or decrees of this court made as above requested.

J. SEYMOUR.
B. F. DAWSON.
HORACE GALPEN.
D. M. HUGHES.
F. P. JAMES.
F. VOSE.

Feb'y 21st, 1862.

DISTRICT OF WISCONSIN, *ss:*

N. A. Cowdrey, being sworn, says that the persons signing the foregoing application now have in their possession and signed to an agreement by which other and further amounts are to come into their possession, the number, amount, and classes of bonds as set forth in the application.

The deponent's means of information are that he is their secretary, and as such has recorded, counted, and registered each and every of the bonds in their possession, and now has them in boxes in the bank, to which he holds one key and Isaac Seymour the other.

That he has in his possession the written assent of said $339,000 bondholders to place their bonds in the custody and control of the persons named in said application.

N. A. COWDREY.

Subscribed and sworn to before me March 1st, A. D. 1862.

EDWARD KURTZ,
U. S. Com., Dist. Wis.

738 March 22, 1862. Receiver's report for February, 1862, filed.

And afterwards, on the 24th day of March, 1862, came J. Albert Helfenstein, by his counsel, and filed his bond for an appeal as follows, viz :

Appeal—Helfenstein.

Supreme Court of the United States.

GREENE C. BRONSON, SHEPHERD KNAPP, AND JAMES T. SOUTTER,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, and others.

Appeal in equity from the district court of the United States for the district of Wisconsin.

Know all men by these presents that we, J. Albert Helfenstein and Moses Kneeland, of the city of Milwaukee, are held and firmly bound into the above-named Greene C. Bronson, Shepherd Knapp, and James T. Soutter, their executors and administrators, to which payment, well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this twenty-fourth day of
739 February, eighteen hundred and sixty-two.

Whereas the above-named J. Albert Helfenstein has taken an appeal to the Supreme Court of the United States to recover the final decree rendered by the district court of the United States for the district of Wisconsin, the 13th day of January, eighteen hundred and sixty-two, in the above entitled suit :

Now therefore the condition of this obligation is such that if the above-named J. Albert Helfenstein shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his appeal, then this obligation shall be void ; otherwise the same shall be and remain in full force and virtue.

J. ALBERT HELFENSTEIN, [SEAL.]
MOSES KNEELAND. [SEAL.]

Signed, sealed, and delivered, in presence of—
HORACE BELDEN,
As to J. A. HELFENSTEIN,
A. G. MILLER.

March 24, 1862. This bond is approved, and appeal allowed.
A. G. MILLER, *Judge.*

And afterwards on March 25, 1862, came Selah Chamberlain, by his counsel, and filed his motion for an appeal, as follows, viz :

The district court of the United States for the district of Wisconsin.—In equity.

740 GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees and complainants,
vs.
SELAH CHAMBERLAIN impleaded with THE LA CROSS AND MILWAUKEE RAILROAD COMPANY and others, defendants.

Appeal of Chamberlain.

The above-named defendant, Selah Chamberlain, considering himself aggrieved by the final decree entered on the 13th day of January, 1862, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States; and he prays that this his appeal may be allowed and that a transcript of the record, proceedings and evidence in the cause may, duly authenticated, be sent to the Supreme Court. March 24, 1862.

EMMONS, VAN DYKE & HAMILTON.
Solicitors.

Whereupon it is ordered by the judge that said appeal be and hereby is allowed, and that he enter into a bond with surety to be approved by the judge in the penalty of five hundred dollars, conditioned for the payment of the costs of said appeal.

And on the 1st day of April, 1862, came Selah Chamberlain by his solicitors and filed his bond for an appeal, as follows, viz:

Know all men by these presents that we, Selah Chamberlain, of Cleveland, in the State of Ohio, as principal, and Daniel L. Wells and James Bonnell, of Milwaukee, Wisconsin, as sureties, are
741 held and firmly bound unto Greene C. Bronson, Shepherd Knapp, and James T. Soutter, their executors, administrators, jointly and severally firmly by these presents. Dated this thirty-first day of March, in the year 1862.

Whereas the above bounden Selah Chamberlain has appealed to the Supreme Court of the United States from the district of Wisconsin, bearing date the thirteenth day of January, 1862, in a cause wherein the said Greene C. Bronson, Shepherd Knapp, and James T. Soutter were complainants, and the said Selah Chamberlain, The La Cross and Milwaukee Railroad Company and others, were defendants:

Now therefore the condition of this obligation is such that if the above named Selah Chamberlain shall prosecute his appeal with effect and pay all such costs and expenses as shall be awarded against him as such appellant therein, then this obligation to be void; otherwise to remain in force.

SELAH CHAMBERLAIN, [SEAL.]
By DAN'L L. WELLS, his attorney in fact.
DAN'L L. WELLS. [SEAL.]
JAMES BONNELL. [SEAL.]

Witness:
N. J. EMMONS,
W. H. STORER.

Endorsed: April 1, 1862. Approved,

A. G. MILLER, *Judge.*

742 April 16, 1862. Receiver's report for month of March, 1862, filed.

And afterwards on the 8th day of May, 1862, came A. Fleming, by Matt. H. Carpenter, his solicitor, and filed his petition as follows, viz:

Petition of Fleming for Milwaukee and Minnesota Railroad.

743 In district court of the United States for the district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendants.

To the Hon. Andrew G. Miller, judge of said district court of the United States for the district of Wisconsin, in equity:

The undersigned, Alexander Fleming, a stockholder of the Milwaukee and Minnesota Railroad Company, one of said defendants, humbly petitioning, respectfully represents to your honor: That the La Crosse and Milwaukee Railroad Company is, and for more than five years last past have been, a corporation, created by and existing under the laws of the State of Wisconsin; and that its business and affairs have been managed by a board of directors; that about the 21st day of June, A. D. 1858, the said last-named company was indebted in a large amount of floating debt, contracted for rolling stock and materials furnished and provided and labor performed for said company, which was unsecured upon the railroad or other
744 property of said company; and that a large number of the farmers along the line of said company's railroad had, before they loaned their credit in form of bonds and mortgages to aid said company in the construction and equipment of its said railroad, which bonds and mortgages had before then been used by the said company, with a stipulation on its part with and to said farmers to pay the interest that might accrue thereon; and that a large sum of said interest, which said company was bound to pay as aforesaid, had become due and the said company was unable to pay the same, and proceedings were threatened against such farmers to enfore payment of such interest; and that said company, for the purpose of securing such indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, solely delivered and transferred, in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds

of one hundred dollars each, all dated that day and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the first day of January and July in each year, with
745 coupons for said interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did on the said 21st day of June, A. D. 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last-named bonds and the interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "all and singular the railroad of said company, commencing in the city of Milwaukie and running from thence to La Crosse, a distance of about two hundred miles, a part of which road has been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces or parcels of land which then were or might thereafter be or constitute the site of the road ways, turnouts, engine-houses, work-shops, depots, and other buildings, and all the other lands and real estate which then constituted or might thereafter constitute or be a part of, or appertain to, said railroad, whether then made or to be made thereafter, and all the engine-houses, work-shops, depots, and other buildings, and all the other improvements on or apper-
746 taining to said railroad, whether then made or built or to be built and made thereafter; and also all and singular the locomotive engines and other rolling-stock, and all the other equipments, of every kind and description, which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property, which had then been or might thereafter be procured for or used in connexion with such railroad; and also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company delivered to William Barnes, trustee, and was by said trustee thereafter caused duly and legally recorded in the office of the secretary of state of the State of Wisconsin and in the offices of the registrars of deeds in the several counties through which said railroad passes and was then located; that on the 11th day of August, 1858, the said company made, signed, sealed and delivered to said Barnes, trustee, a certain indenture of supplementary mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21st, 1858, and did convey to said Barnes,
747 as trustee, as aforesaid, in addition to the things in said first mortgage conveyed, the following, that is to say: "All and singular the rights, privileges, liberties, and franchises of said company, of every kind and description; and also all lands granted or intended to be granted to said company, under and by virtue of

the act of Congress and the act of the legislature of the State of Wisconsin, in said supplementary mortgage mentioned; and also all the hereditaments and appurtenances belonging or in any way appurtaining to the lands and real estate therein conveyed or intended to be conveyed; and also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature, which might be owned, or in which said company might have an interest, on such day as such company might first make default in the payment of interest or principal, or any part thereof, which thereafter became due on any of the said bonds issued or to be issued by said company, and to secure which said mortgage was given. That immediately thereafter the said Barnes caused the said supplementary mortgage to be recorded at and in the same offices as the first named deed of trust or mortgage to said Barnes was recorded, as hereinbefore set forth—a copy of which said first mortgage or deed of trust, and a copy of said supplementary mortgage or deed of trust to said
748 Barns are attached hereto, and marked, respectively, Exhibit No. 1 and Exhibit No. 2.

And your petitioner further shows unto your honor that immediately thereafter said company commenced to deliver the said last-named bonds, so secured as aforesaid, in payment of the indebtedness of said company, and for the other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company; and that all of said bonds were sold and delivered in payment and transferred by said company for the purposes and in the manner contemplated as aforesaid by said company; and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to and services rendered for said company; and that large numbers of said bonds are now held by such persons in the said State, or have been turned by them into the stock of the Milwaukee and Minnesota Railroad Company, as hereinafter stated; and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States—particularly in the city of New York—which are now held by *bona fide* purchasers and owners, or have been
749 by them turned into the stock of the Milwaukee and Minnesota Railroad Company, as hereinafter mentioned.

That about the 1st of February, A. D. 1859, the said company having made default in payment of a part of the interest due on said bonds secured as aforesaid, the said William Barnes in pursuance of the provisions of the laws of the said State of Wisconsin then in force in that behalf, and the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by advertisement, and having previously given the notice required by law in that behalf, on the 21st of May, A. D. 1859, said William Barnes, trustee, sold at public auction at the court-house in the city and county of Milwaukie, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things

in said mortgage and supplementary mortgage to him, said Barnes, described; and the said William Barnes, trustee, then and there, at said sale, became the purchaser thereof, according to the provisions of the laws of the said State of Wisconsin, then in force in that behalf, at and for the sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33,) no other person or body having made any bid whatever for the same, and that said mortgages thus became
750 and were thereby foreclosed according to the provisions of the laws of the State of Wisconsin in that behalf then in force.

And that said Barnes by virtue of said purchase and the provisions of the laws of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises, and other things so purchased by him, and thereafter held the same in trust, and only in trust, for the holders of the then outstanding bonds secured by said mortgages.

And that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds proceeded to organize anew, and then and there elected directors and took the corporate name of the "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last named company all the property and things by him purchased as aforesaid, and thereafter said company proceeded and conducted their business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company, and thereby became and ever since have continued a corporation under and by virtue of the laws of said State, capable of suing and being sued, and that said Milwaukee and Minnesota Railroad Company immediately thereafter entered into the possession of said property and franchises of said La Crosse
751 and Milwaukie Railroad Company, so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the time of said sale.

And your petitioner further shows unto your honor that said bondholders, at said new organization, elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Company, viz: Russell Sage, N. J. Emmons, Hans Crocker, Wm. E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Sill, and ——— Batterhall, and that said directors immediately thereafter organized the said board of directors by electing and choosing Russell Sage president, N. J. Emmons vice-president, and Dwight W. Keyes secretary of said Milwaukee and Minnesota Railroad Company.

And your petitioner further shows unto your honor that, by virtue of said foreclosure of said deeds of trust or mortgages to said Barnes as hereinbefore set forth, and the organization of the said Milwaukee and Minnesota Railroad Company, and conveyance of said Barnes as hereinbefore set forth, *that* the said Milwaukee and Minnesota Railroad Company became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad
752 Company, as to all the property and things described in said

deeds, and the owner of and clothed with the rights, privileges, franchises, and property, real and personal, and things in action, and effects of every nature and description, before then belonging to such La Crosse and Milwaukee Railroad Company, wherever situated, and however circumstanced, subject only to such valid and legal liens and incumbrances thereon as were prior to said first deed to said Barnes.

Your petitioner further represents that by an act of Congress, entitled "An act granting a portion of the public lands to the State of Wisconsin to aid in the construction of railroads," approved June 3, 1856, and by an act of the legislature of the State of Wisconsin entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company," &c., approved October 11, 1856, the said defendant railroad company become contingently entitled to have and receive from the general government, through the State of Wisconsin, as its trustee, a conveyance of lands to the amount of about one million of acres, which lands, at the time of the execution of the mortgage or trust deed for the foreclosure of which the above entitled action is brought, were estimated by said railroad company to be of the value of seventeen millions of dollars. That by the said act of the legislature of the State of Wisconsin it was provided "that the title to said lands shall rest in the La Crosse and
753 Milwaukee Railroad Company in the manner following, that is to say: whenever twenty continuous miles of the said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title of two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor shall certify as above, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company, and so from time to time until said roads are completed. And it shall be the duty of the governor so to certify to the Secretary of the Interior whenever any such twenty miles are completed, so as to admit of running of regular trains of cars over the same.

And the governor of the State shall, in his official capacity, and in behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall, by virtue of the provisions of the chapter be entitled to any of said lands, a deed in fee simple, of any and all the lands to which said company shall be entitled. *Provided*, That said company shall not sell any of said lands until twenty miles of said
754 road shall be completed, so as to admit of running regular trains over the same, and so on from time to time, so that the sale of said company shall never exceed six sections of land for every mile of said road completed." And that in and by said act it was further provided that "the location and designation of the route and line of the said roads shall be made by the said La Crosse and Mil-

waukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of this State.

The selection of lands provided for in the act of Congress herein mentioned shall be made by such agents as may be appointed by the governor of this State."

Your petitioner further represents, upon information and belief, that soon after the passage of said act, the line of said company's railroad was duly located and designated from the city of Madison to Portage City, and from Portage City towards the St. Croix river or lake, a distance of over 100 miles in all, and the same was put under contract, and the same was duly reported to the governor of the State, and that during the years 1857 and 1858 over sixty continuous miles of said railroad were completed, so as to admit of running regular trains on the same from Portage City westward; and the fact was duly reported by the said company to the governor of this State; and the said company thereupon and thereby become entitled to
755 have such fact certified by the governor of the State to the Secretary of the Interior of the United States in pursuance of said act, and to have the title to four hundred and eighty sections of said granted lands vest in the said La Crosse and Milwaukee Railroad Company, and to have conveyance of the same.

But your petitioner is informed and believes that the said La Crosse and Milwaukee Railroad Company has hitherto neglected or failed to procure from the governor of the State the requisite certificate or certificates to the Secretary of the Interior to cause or procure the titles to any of the said lands to vest in said company under the provisions of said acts; and, in consequence thereof, the said company has not yet acquired, as it might and ought to have done, the title to any part or parcel of said lands.

And your petitioner is advised and believes that, by reason of the facts aforesaid, the said railroad company and the said complainants, as trustees or mortgagees under the mortgage sought to be foreclosed in said action, have not acquired or perfected any right or title to any of said lands which this court is competent by its decree to convey to any purchaser possession under its decree in the said action; and that, therefore, any sale which may be made or attempted to be made under the said decree without further action of this court or
756 of the said complainants to secure the title of said lands to vest in said company under the said acts will be absolutely valueless to the purchaser, and wholly unproductive to the complainants.

But your petitioner is advised and believes that such sale, if made under the provisions of said trust deed or mortgage and the decree of this court, will cut off and extinguish all the equitable claim, right, and interest of the said La Crosse and Milwaukee Railroad Company, and of your petitioner and all other creditors thereof whose liens are subsequent to the lien of said trust deed or mortgage, in and to all the lands so as aforesaid granted to the La Crosse and Milwaukee Railroad Company.

Your petitioner further represents, upon information and belief,

that by the proper proceedings on the part of this court and of the said complainant's trustees the title to four hundred and eighty sections of the said granted lands may be caused and procured to vest in the said La Crosse and Milwaukee Company, and to ensure to the benefit of the said trustees under their said trust deed or mortgage, and that the same, being thus made capable of being sold in distinct lots and parcels, will bring a very large sum of money, and, as your petitioners believe, as much as eight hundred thousand dollars. Your
757 petitioner insists that inasmuch as it is provided in and by the said legislature of the State of Wisconsin "that said land shall be exclusively applied in the construction of that road for which it was granted and selected, and *shall be disposed of only as the work progresses*," and "that said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on from time to time, so that the sale of land by said company shall never exceed six sections of land for every mile of said road so completed," it was not the policy of the legislature or the intention of said trust deed or mortgage of which said act forms a part, to authorize the sale of any part of said lands until the title of the company thereto should be perfected in conformity to said act; and much less was it the policy or design of the legislature to authorize said company, by the instrumentality of a mortgage, to extinguish its entire right and claim to the said granted lands without completing a single mile of road or acquiring title to a single section of said lands.

Your petitioner further represents that he is informed and believes that the track and line of said railroad and the real estate and rolling stock conveyed by said trust deed or mortgage, are wholly inadequate, without including said granted lands, to pay the principal
758 sums and interest secured, or intended to be secured, thereby; that said granted lands are a collateral security available to the complainants in said action, but not available to any other creditors of said railroad company, and that by the terms of said trust deed, as by the general principals in equity, the said complainants are bound to resort, first, to said collateral security for the payment of said mortgage debt, and to make the same productive and available, as far as practicable, before resorting to the principal security upon which the other creditors of the company must rely solely for the payment of their claims.

Your petitioner further represents that, under and by virtue of the decree made and entered in the said action on the 16th day of January, 1862, the marshal of the United States for the district of Wisconsin has advertised for sale at public auction at the post office in the city and county of Milwaukee "all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue" of the aforesaid act of Congress, approved June 3, 1856, "and under and by virtue of the aforesaid act of the legislature of the State of Wisconsin, approved October 11, 1856," together with the track or line of said company's railroad extending from Portage City to the city of La Crosse, and all the fixtures,

real estate and rolling stock belonging or appurtenant to said
759 track or line, and conveyed or intended to be conveyed by said trust deed or mortgage, the lands mentioned as granted by the United States to be sold first; which sale your petitioner is informed and believes the said complainants and the said marshal intend to make or cause to be made at the said time and place, and unless restrained by the order of this court he believes and fears said sale will then and there be made.

Your petitioner further represents that he is advised and verily believes the said sale or pretended sale of the lands so as aforesaid granted in and by the aforesaid acts, will not produce any more than the bid of a merely nominal sum, and will not be available to the purchaser, if one is found, for any practicable or valuable purpose, but that it will affect in form at least, a legal and absolute transfer and extinguishment of all the right and claim of the said La Crosse and Milwaukee Railroad Company in and to the whole of said granted lands under the acts aforesaid, and will cause an irrepairable injury to the creditors of said company, including your petitioner, and also to the stockholders and all persons interested in the appropriation of said lands to the construction of the railroads designated in and authorized by the aforesaid acts, and will lead to innumerable and vexatious suits and interminable litigation in regard to the title, control, and future disposition of said granted lands. Your
760 petitioner therefore prays that an order may be made staying or postponing the said contemplated sale until the title to such portion of said lands as the said company equitably ought to have conveyed to it, by reason of its having completed sixty or more continuous miles of its road, shall have been procured from the State and made available to the said complainants; or that your petitioner may have such other or such further relief in the premises as may be just and equitable.

Your petitioner further represents that he is, and before the commencement of this suit was, the owner of more than twenty-five shares of the capital stock of the Milwaukee and Minnesota Railroad Company, of one hundred dollars each share, and that he now represents as either owner or part owner or agent for the *bona fide* owners thereof more than a majority of the capital stock of said last-named company.

That there has been no election of the board of directors of said last-named company since the year 1859, and that the present board of directors are holding over under said election of 1859, and are holding over against the wishes and will of and in fraud of the rights of a majority of the stockholders of said company.

That on the 22d day of January, A. D. 1862, the circuit
761 court of the State of Wisconsin, for Milwaukee county, on the application of your petitioner and in pursuance of law, ordered a meeting of the stockholders of said company for the election of directors of said company, to be held at the court house in the said city and county of Milwaukee, in said State, on the 10th day of March, A. D. 1862, but that N. J. Emmons, then a member of said holding-over board of directors, and John H. Van Dyke, law partner of said

Emmons, prevented said election being held as ordered as aforesaid, by perfecting in form of an appeal to the superior court of said State from the said order of said circuit court, and your petitioner believes and therefore thereupon states that said Emmons perfected said appeal in accordance with the wishes of a majority of said board of directors.

Your petitioner further states that he procured to be prepared a draft or petition substantially like this, and directed M. H. Carpenter, his solicitor, to present the same to John P. McGregor, esq., who pretends to be attorney for said last-named company and a member of said holding-over board, with a request that the said McGregor would present the same to your honor in the name of said company; and your petitioner is informed and verily believes that said Carpenter did, on or about the 22d day of April, A. D. 1862,
present said draft of said petition to said McGregor, with a
762 request that he would present the same to your honor as attorney for said company; and that said McGregor, after considering the same, stated to said company that himself and John H. Tweedy, another member of said holding-over board, had consulted in regard to said request, and had concluded to decline to present the same to said court; that he, said Tweedy, could see no objection to it, but that said Tweedy thought said petition was too lengthy and perfect in its statements, and that he, said McGregor, should prepare and present to your honor a brief petition upon the same subject, referring to the mortgage or deeds of trust already on file in that cause; that said Carpenter thereupon informed said McGregor that he should present said petition on behalf of your petitioner, and also informed him that said company had never appeared in said cause, and that said deeds of trust to said Barnes were not on file in said cause; and the said McGregor thereupon promised to said Carpenter to prepare and present to your honor a brief petition, and refer therein to said deeds of trust, copies of which would be attached to your petitioner's petition; and that afterwards, in the court-room of the said district court, said McGregor informed said Carpenter that he had just had a consultation with another member of said
holding-over board, who objected to the said McGregor's pre-
763 senting any petition whatever to your honor on the subject; that therefore the said McGregor could not take the responsibility of acting in the premises unless subsequently directed by the board of directors.

Your petitioner verily believes that said board is controlled by persons whose interests are opposed to the interests of a majority of the stockholders of said company, and that no petition will be presented by permission of said board; or that, if any is presented, it will be intentionally made so defective and imperfect as not to present to your honor the rights and equities of said company in the premises.

Your petitioner therefore humbly prays that upon his this petition your honor will be pleased to consider the facts hereinbefore

set forth, and which your petitioner begs leave to verify in such manner as your honor or said court may direct, and that the said company may have such other or further and different relief as may be agreeable to equity in the premises.

A. FLEMING.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he has read and knows the contents of the foregoing petition,
764 and that he believes the same to be true.

A. FLEMING.

Subscribed and sworn to before me this fifth day of May, 1862.

J. W. MILLER, *Clerk.*

765 *Exhibit No.* 1.—*Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA,
State of Wisconsin.

No. ——. $——.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof in the sum of ——— dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La

Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

——— ———, *President.*

——— ———, *Secretary.*

Registered and countersigned this ———, 185—.

——— ———, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does, by these presents, grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces or parcels of land which now are, or hereafter may be, or constitute the site of the road-ways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad; and also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made or to be built or made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used

in connexion with said railroad ; and also all and singular the rights, liberties, and privileges, and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real or personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges, and fran-
766 chises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if the said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin, subject, nevertheless, to lines already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars. Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four million dollars upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah, to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid mortgages to the aforesaid party of the second part and his successor and his heirs and assigns forever, in trust, nevertheless, and upon the trusts, terms and conditions herein expressed. *First.* Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made. *Second.* In case default for the space of 15 days shall be made on the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroad and all the other property, real and personal, herein before conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges and franchises of said railroad com-

pany in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee ; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned. *Third.* Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time, during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises, aforesaid. *Fourth.* Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise, or be imposed upon, the property hereby conveyed or intended to be conveyed ; and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided. *Fifth.* This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will re-convey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustee in, about, or for the execution of the trust, and will in all things keep him fully indem-

nified and saved harmless of from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars; with such sum as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust, at the lowest price he can purchase the
767 same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, Such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee, and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its presi-

[SEAL.] dent and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
By N. P. STANTON, *President.*
LOCKWOCD L. DOTY,
Secretary of the La Crosse and Milwaukee Railroad Company.
WILLIAM BARNES, *Trustee.* [SEAL]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee.

CLARK, B.,
J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
P. M. JOHNSON.

STATE OF NEW YORK,
County of Albany:

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Seventy-one State street, in the city, [SEAL.] of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK,
County of Albany, ss:

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto and the La Crosse and Milwaukee Rail-
768 road Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. Seventy-one State street, in the city of Albany, the day and year first above written. [SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said coporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal. [SEAL.]

E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

769 EXHIBIT No. 2.

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be and is hereby granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be farther than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided, further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands,

in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land, which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands, when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways, for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following—that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same.

Approved June 3d, 1856.

And whereas, the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856." The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, com plete, and perpetually to have, use, maintain, and operate railroads, with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise, and enjoy the
770 same rights, privileges, functions, franchises, authority, and immunities with reference to the said routes, or any railroad

to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built or to be built thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract, in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connexion with any and all other railroads which may cross, come up to, or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies, as last above mentioned, but all such companies shall be put upon the same equal terms: *And provided, also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connexion with the same, shall at any time not be able to agree upon the terms of such connexions, then, and in that case, either party may apply to the circuit court of the circuit in which such connexion may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connexion shall exist, and the said award of terms of connexion shall be filed in the office of the Secretary of State, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads, which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present or prospective, of this State, in or to any and all the lands

granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said land shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say: whenever twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed; so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company, and so from time to time until said roads are completed; and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed, so as to admit running regular trains of cars on the same; and the governor of the State shall, in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed, so as to admit of running regular trains over the same, and so on from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such

agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of
771 property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct, under the present charter, and, in addition thereto, it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents, and employees of the said company and other persons, and if any person so examined by the governor or other authorized person shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company.

The first payment shall be made on the first day of March next, after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made; and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State (except special taxes for the improvement of streets and sidewalks) upon all stock in the said La Crosse

and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operation of said railroad, and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company; and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited *qualities* at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other water craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other water craft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States or of this State to aid in the construction of railroads which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge or otherwise dispose of all their right, title, claim, or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree. And if the

said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then and in that case each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall constitute a board of
772 commissioners, whose duty it shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukie Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act, and all grants herein contained, shall cease and be void unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold. or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary, pro rata, from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its roads in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and, when thus published, shall take effect and be in force.

And whereas the said railroad company, after the passage of the last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was, on the same day, deposited in the office of the secretary of State:

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined before the date of the indenture hereinafter mentioned, dated June 21st, 1858, between said company of the first part, and said Barnes as trustee of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached:

And whereas also the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in Book of Railroad Mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear:

And whereas also the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances;

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a dis-
773 tance of about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage City to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the rail-road of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee Railroad Company by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, enginehouses, workshops, depots, and other buildings, and all other lands and real estate, which now constitute or may hereafter constitute, or be a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever, which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter.

And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils and other personal property which have been, or may hereafter be, procured for or used in connexion with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued, or to be issued, by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and person[al.] and mixed of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, part[y] of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed, or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, States, or corporations lawfully claiming, or to claim, the same or any part thereof, subject, nevertheless, to all legal *liens* already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments, and

appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid existing legal liens to the aforesaid party of the second part and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be
774 made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But, before any sale shall be made at auction, notice of such intended sale shall be published once in each week *for three weeks* at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be *required by the laws of the State of Wisconsin, the same shall be given.* And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will from time to time, during the continuance of the trust, make, execute, cause to be

duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge, or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company that the provision herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture in the same manner as if all the provisions thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

{ [SEAL.] LA CROSSE & MILWAUKEE R. R. COMPANY. }

LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
By N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to William Barnes, the said trustee.

JOHN G. WHITE.
ISAAC EDWARDS.

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STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing, as the president and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president aforesaid, freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written. [SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company,

and acknowleged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. Third street, in the city of Milwaukee, the day and year above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the ackowledgment and proof of the of deeds or other conveyances or leases and of any contract, execution letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded September 1st, 1858, at 8 o'clock a. m.

776 And on the same day came Lawrence G. Graham and Donald D. Scott, by their solicitor, Matt. H. Carpenter, and filed their petition, as follows, viz:

777 *Petition Graham and Scott.*

In the district court of the United States for the district of Wisconsin.—In equity.

GREENE C. BRONSON, JAMES G. SOUTTER, and SHEPERD KNAPP, trustees, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others, defendants.

To the Hon. A. G. Miller, judge of said court:

Your petitioners, Lawrence G. Graham and Donald D. Scott, two of the defendants in the above entitled cause, respectfully show unto your honor, that the said defendant the La Crosse and Milwaukee Railroad Company, being largely indebted to your petitioners, on the 1st day of October, A. D. 1857, for value received duly executed and delivered to your petioners its three certain promissory notes in writing, bearing date on the said 1st day of October, A. D. 1857, No. 463, for ten thousand dollars, No. 465 for nine thousand seven hundred and seventy-seven dollars and 16 cents, and No. 464 for ten thousand dollars; that after said notes became due and payable and remaining unpaid, your petitioners commenced an action thereon in the circuit court for the county of Milwaukee, in the State of Wisconsin, against the said defendants the said La Crosse and Milwaukee Railroad;

788 and that such proceedings were thereupon had, that afterwards and on the 25th day of November, A. D. 1858, in said circuit court before the judge thereof, your petitioners recovered judgment against the said La Crosse and Milwaukee Railroad Company for the sum of 29,820 dollars and seventy-one cents, damages and costs.

Your petitioners further show that the La Crosse and Milwaukee Railroad Company being further indebted to your petitioners, on the 1st day of October, A. D. 1857, for value received duly executed and delivered to your petitioners its certain other promissory note in writing, bearing date on said 1st day of October, A. D. 1857, No. 462, for ten thousand dollars, and that after said note became due and payable and remaining unpaid, your petitioners commenced a suit thereon in the said circuit court against the said La Crosse and Milwaukee Railroad Company, and that such proceedings were thereupon had, that afterwards and on the 21st day of September, A. D. 1858, in said circuit court before the judge thereof, your petitioners recovered judgment thereon against said railroad company, for the sum 11,188 dollars and 15 cents, damages and costs.

That afterwards, in December, A. D. 1857, the said judgments remaining entirely unpaid and unsatisfied, and unreversed, to the amount of 41,008 dollars and 86 cents, your petitioners commenced an action thereon in this the district court of the United States for the

779 district of Wisconsin against the said La Crosse and Milwaukee Railroad Company, and caused said company to be duly served with process thereon; and that such proceedings were thereupon had,

that on the 11th day of January, A. D. 1860, in the said district court before the judge thereof, these defendants recovered a judgment against the said La Crosse and Milwaukee Railroad Company for the sum of 44,413 dollars and 18 cents, damages and costs, which judgment, duly entered, enrolled, and docketed, in said court on that day, still remains unpaid, unreversed, and unsatisfied, as by the records of said court, reference being thereto had, will more fully appear; and that the whole amount of said last-named judgment, together with the interest thereon since the date of the docketing of said judgment.

Your petitioners further represent that they are advised and believe, and therefore claim that said judgment constitutes an equitable lien upon all the real estate, buildings, fixtures, rolling stock and other property of said defendant railroad company recognized in law as real estate, subject only to the prior lien of *bona fide* and lawful mortgages and judgments as are prior in date to his said judgment, and is entitled to be paid out of the same property or out of the net proceeds arising from the use and operation thereof, whereon
780 such prior and *bona fide* and lawful liens shall have been satisfied.

Your petitioners further represent that by an act of Congress entitled "An act granting a portion of the public lands to the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, and by an act of the legislature of the State of Wisconsin, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, &c.," approved October 11th, 1856, the said defendant railroad company became contingently entitled to have and receive from the general government, through the State of Wisconsin as its trustee, a conveyance of lands to the amount of about one million of acres, which lands at the time of the execution of the mortgage, or trust deed, for the foreclosure of which the above entitled action is brought, were estimated by said railroad company to be of the value of seventeen millions of dollars; that by said act of the legislature of the State of Wisconsin it was provided that the title to said lands shall vest in the La Crosse and Milwaukee Railroad Company in the manner following—that is to say, whenever twenty continuous miles of said road shall have been completed so as to admit of the running of regular trains on the same, the governor of this
781 State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said land shall vest in the said La Crosse and Milwaukee Railroad Company; and when a second twenty continuous miles of said road shall have been completed so as to admit of running regular trains on the same, the governor shall certify as above, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company, and so from time to time until said roads are completed. And it shall be the duty of the governor so to certify to the Secretary of the Interior whenever any such twenty miles are completed, so as to admit of running of regular trains of cars over the same. And the governor of the State shall, in his official capacity

and in behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company whenever it shall, by virtue of the provisions of this chapter, be entitled to any of said land, a deed in fee simple of any and all the
782 lands to which said company shall be entitled; provided that said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit the running regular trains over the same, and so on from time to time, so that the sale by said company shall exceed six sections of land for every mile of said road so completed. And that in and by said act it was further provided that "the location and designation of the route and line of the said roads shall be made by the La Crosse and Milwaukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of this State." The selection of lands provided for in the act of Congress herein mentioned shall be made by such agents as may be appointed by the governor of this State.

Your petitioners further represent, upon information and belief, that soon after the passage of said act, the line of said company's railroad was duly located and designated from the city of Madison to Portage City, and from Portage City towards St. Croix river or lake, a distance of over 100 miles in all, and the same was put under contract, and the same was duly reported to the governor of the State; and that during the years 1857 and 1858, over sixty continu-
783 ous miles of said road were completed so as to admit of running regular trains over the same from Portage City, westward; and the fact was duly reported by said company to the governor of this State, and the said company thereupon and thereby became entitled to have such fact certified by the governor of the State to the Secretary of the Interior of the United States, in pursuance of said act, and to have the title to four hundred and eighty sections of said granted lands vest in the said La Crosse and Milwaukee Railroad Company, and to have a conveyance of the same.

But your petitioners are informed and believe that the said La Crosse and Milwaukee Railroad Company has hitherto neglected or failed to procure from the governor of the State the requisite certificate or certificates the Secretary of the Interior, to cause or procure the title to any of the land grants to vest in said company under the provisions of said acts, and in consequence thereof the said company has not yet acquired, as it might and ought to have done, the title to any part or parcel of said lands. And your petitioners are advised and believe that, by reason of the facts aforesaid, the said railroad company and the said complainants as trustees or mortgagees, under the
784 mortgage sought to be foreclosed in said action, have not acquired or perfected any right or title to any of said lands which this court is competent, by its decree, to convey to any purchaser, or of which it can give any purchaser possession under its decree in the said action; and that, therefore, any sale which may be made or attempted to be made under the said decree without further action of this court or of the said complainants, to secure the title of said

lands to vest in said company under the said acts, will be absolutely valueless to the purchaser and wholly unproductive to the complainants.

But your petitioners are advised and believe that such sale, if made under the provisions of said trust deed or mortgage, and the decree of this court will cut off and extinguish all the equitable claims, rights, and interest of the said La Crosse and Milwaukee Railroad Company and of your petitioners, and all other creditors thereof, whose liens are subsequent to the lien of said trust deed or mortgage, in and to all the lands so as aforesaid granted to the La Crosse and Milwaukee Railroad Company.

Your petitioners further represent, upon information and belief, that by the proper proceedings on the part of this court and of
785 the said complainants, trustee, the title to four hundred and eighty sections of the said granted lands may be caused and procured to vest in the said La Crosse and Milwaukee Railroad Company, and to inure to the benefit of the said trustees under their said trust deed or mortgage, and that the same thus being made capable of being sold in distinct lots and parcels, will bring a very large sum of money, and, as your petitioner believes, as much as eight hundred thousand dollars.

Your petitioners insist that inasmuch as it is provided in and by the legislature of the State of Wisconsin "That said land shall be exclusively applied in the construction of that road for which it was granted and situated, and shall be disposed of only as the work progresses," and "That said company shall not sell any of said lands until twenty miles of said road shall be completed, so as to admit of running regular trains on the same, and so on from time to time, so that the sale of land by said company shall ever exceed six sections of land for every mile of said road so completed," it was not
786 the policy of the legislature or the intention of said trust deed or mortgage, of which said act formed a part, to authorize the sale of any part of said lands until the title of the company thereto should be perfected in conformity to said act, and much less was it the policy or design of the legislature to authorize said company by the instrumentality of a mortgage to extinguish its entire right and claim to the said granted lands, without completing a single mile of said road or acquiring title to a single section of said lands.

Your petitioners further represent, that they are informed and believe that the track and line of the said railroad and the real estate and the rolling stock conveyed by said trust deed or mortgage are wholly inadequate, without including said granted lands, to pay the principal sum and interest secured or intended to be secured thereby; that said granted lands are a collateral security, available to the complainants in said action, but not available to any other creditors of said railroad company, and that by the terms of said trust deed as well as by the general principle of equity, the said complainants are
787 bound to resort, first, to said collateral security for the payment of said mortgage debt, and to make the same productive and available as far as practicable before resorting to the principal security

upon which the other creditors of the company must rely solely for the payment of their claims.

Your petitioners further represent, that under and by virtue of the decree made and entered in the said action on the 16th day of January, 1862, the marshal of the United States for the district of Wisconsin has advertised for sale at public auction at the post office in the city and county of Milwaukee, "All and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of the aforesaid act of Congress approved June 3, 1856, and under or by virtue of the legislature of the State of Wisconsin, approved October 11, 1856, together with the track or line of said company's railroad extending from Portage City to the city of La Crosse, and all the fixtures, real estate, and rolling stock belonging or appurtenant to said track or line,
788 and conveyed or intended to be conveyed by said trust deed or mortgage; the lands mentioned as granted by the United States to be sold first, which sale your petitioners are informed and believe the said complainants and the said marshal intend to make or cause to be made at the said time and place, unless restrained by the order of this court, they believe and fear said sale will then and there be made.

Your petitioners further represent that, as they are advised and verily believe, the said sale or pretended sale of the lands as aforesaid granted in and by the aforesaid acts will not produce any more than the bids of a merely nominal sum, and will not be available to the purchaser, if one is found, for any practicable or valuable purpose, but that it will effect in form, at least, a legal and absolute transfer and extinguishment of all the right and claim of the said La Crosse and Milwaukee Railroad Company in and to the whole of said granted lands under the acts aforesaid, and will cause an irreparable injury to the creditors of said company, including your petitioners, and also to the stockholders and all persons interested in appropriation
789 of said lands to the construction of the railroads designated and authorized by the aforesaid acts, and will lead to innumerable and vexatious suits, and interminable litigation in regard to the title, control, and future disposition of said granted lands.

Your petitioners, therefore, pray that an order may be made staying or postponing the said contemplated sale until the title to such portions of said lands as the said company equitably ought to have conveyed to it by reason of its having completed sixty or more continuous miles of its road shall have been procured from the State and made available to the said complainants, or that your petitioners may have such other and such further relief in the premises as may be just and equitable.

MAT. H. CARPENTER,
Sol. for Petitioners.

DISTRICT OF WISCONSIN, *ss:*

Lawrence G. Graham, being first duly sworn, on oath says, that he is the Graham mentioned in the foregoing petition; that he has read

said petition and knows its contents, and that he verily believes the same to be true.

LAWRENCE G. GRAHAM.

Subscribed and sworn to before me this 21st day of April, A. D. 1862.

J. M. MILLER,
Clerk U. S. D. C., Wis.

790 And on the same day came J. Albert Helfenstine, by his solicitors, and filed his petition in the words and figures following, to wit:

791 *Petition of J. Albert Helfenstine.*

District court of the United States for the district of Wisconsin.

GREENE C. BROWN, JAMES T. SOUTHER, and SHEPHERD KNAPP, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, and other defendants.

To the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin:

Your petitioner, J. Albert Helfenstein, who is one of the defendants in the above entitled action, and who has duly appeared and filed his answer therein, respectfully represents that on the 26th day of September, 1857, the La Crosse and Milwaukee Railroad Company, in pursuance of power and authority vested in it by the laws of the State of Wisconsin, did make, execute, and deliver to your petitioner in due form of law a deed of trust or mortgage of that date between the said defendants, the La Crosse and Milwaukee Railroad Company, party of the first part, and your petitioner as party of the second part, which mortgage was duly sealed with the corporate seal of said company, and signed by its president and secretary. That in and by said mortgage the said company mort-
gaged to your petitioner all and singular the several tracts,
792 pieces, and parcels of land which then were or might thereafter be or constitute the site of the railway, turnouts, engines, houses, workshops, depot, and other buildings, and all other lands and real estate which then constituted or might thereafter constitute or be a part of the road of said defendants, the La Crosse and Milwaukee Railroad Company, from Madison, by way of Portage City, to the city of Prescott, and from Portage City to the city of La Crosse, together with certain real estate, more particularly described in the mortgage, a copy of which is on file in this action in trust for the payment of certain bonds issued by said railroad company, as appears from the answer of your petitioner in this cause, as by reference thereto will fully appear.

Your petitioner further shows that he is advised and believes, and therefore claims, that said mortgage constitutes a legal and equitable

lien upon all the real estate and other property embraced within, and covered by the same, security for the payment three hundred and sixty-three thousand dollars, and interest, represented by the bonds issued under said mortgage and secured thereby and negotiated by said company, subject only to the prior liens of such *bona fide* and lawful mortgages and judgments as are prior in date and superior in lien to your petitioner's said mortgage, and the amount of said bonds and interest is entitled to be paid out of said property or out of the nett proceeds arising from the use and operation thereof whenever
793 such prior *bona fide* and superior liens shall have been satisfied.

Your petitioner further represents, that by an act of Congress entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3d, 1856, and by an act of the legislature of the State of Wisconsin, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company," approved October 11th, 1856, the said defendant railroad company became contingently entitled to have and receive from the general government, through the State of Wisconsin, as its trustee, a conveyance of lands to the amount of about one million of acres, which lands, at the time of the execution of the mortgage or trust deed, for the foreclosure of which the above-entitled action is brought, were estimated by the said railroad company to be of the value of seventeen millions of dollars; that by the said act of the legislature of the State of Wisconsin it was provided that the title to said bonds shall vest in the La Crosse and Milwaukee Railroad Company in the manner following, that is to say: Whenever twenty continuous miles of said road shall have been completed so as to admit of running regular trains over the same, the governor of the State shall certify to the Secretary of the Interior the fact that twenty continuous miles of such road are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the said La Crosse and Milwaukee Railroad Company; and when a
794 second twenty continuous miles of said railroad shall have been completed so as to admit of running regular trains on the same, the governor shall certify as above, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company, and so from time to time, until said roads are completed, and it shall be the duty of the governor to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit of running of regular trains of cars upon the same. And the governor of the State shall, in his official capacity and in behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall, by virtue of the provisions of this charter, be entitled to any such lands, a deed in fee-simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on from time to time, so that the sales by said company shall never exceed six sections of land for every mile of road so completed; and that in and by said act it was further provided that the location and

designation of the line and route of said road shall be made by the La Crosse and Milwaukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of this State. The selection of lands provided for in the act of Congress herein mentioned shall be made by such agents as
795 may be appointed by the governor of this State.

Your petitioner further represents, upon information and belief, that soon after the passage of said act the line of said company's railroad was duly located and designated from the city of Madison to Portage City, and from Portage City towards the St. Croix river or lake, a distance of over one hundred miles in all, and the same was put under contract to be built, and the same was duly reported to the governor of the State; and that during the years 1857 and 1858 over sixty continuous miles of said railroad were completed so as to admit of running regular trains on the same from Portage City westward, and the fact was duly reported by said company to the governor of of this State, and the said company thereby and thereupon became entitled to have such fact certified by the governor of the State to the Secretary of the Interior of the United States, in pursuance of said act, and to have the title to four hundred and eighty sections of said granted lands vest in said La Crosse and Milwaukee Railroad Company, and to have a conveyance of the same.

And your petitioner further represents, that, by said of Congress approved June 3d, 1856, Congress appropriated to the State of Wisconsin every alternate section of land designated by odd sections, for six sections in width on each side of said railroad from Madison or Columbus by way of Portage City to the St. Croix river or lake, &c., with a further provision that in case it should appear that the United States at the time the lines of the proposed railroad should be located and definitely fixed had sold any sections or track thereof
796 granted by said act, or the right of pre-emption had attached to the same, that it should be lawful for any agent or agents, to be appointed by the governor of Wisconsin, to select, subject to the approval of the Secretary of the Interior, from the lands nearest to the line of sections above specified as much land in alternate sections or parts of sections as should be equal to such lands as the United States should have sold or appropriated, or to which the right of pre-emption had attached as aforesaid, which lands thus selected in lieu of those sold, and to which pre-emption had attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid, provided the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads, &c.

Your petitioner further represents, on information and belief, that at the time the line of the La Crosse and Milwaukee Railroad was located from Madison, by way of Portage City, to the river St. Croix, the United States had parted with the title to all or nearly all of the land lying between Madison and Portage City, and between Portage City and the terminus of the sixty miles of railroad constructed by

said La Crosse and Milwaukee Railroad Company as hereinbefore set forth, so that, to enable said company to acquire a legal title to the aforesaid four hundred and eighty sections of land, it was
797 necessary that a selection of such lands should be made by the agent or agents appointed by the State, in accordance with the provisions of said acts of Congress and the legislature of the State, as hereinbefore set forth.

Your petitioner further represents, that agents were duly appointed by the governor of Wisconsin, pursuant to the provisions of said act, shortly after the aforesaid act of the legislature transferring said grant to the La Crosse and Milwaukee Railroad Company was passed, who at all times have been ready and willing to enter upon the discharge of their duties and make the selections of said lands when required by said company; but your petitioner is informed, and believes, that the said La Crosse and Milwaukee Railroad Company has never taken any steps whatever to cause such selections to be made; that it has hitherto neglected or failed to procure from the governor of the State the requisite certificate or certificates to the Secretary of the Interior under the provisions of said acts of Congress and the legislature of the State.

And in consequence thereof, and of its failure to cause the proper lands to be selected, the said company has not yet acquired, as it might and ought to have done, the title to any part or parcel of said lands. And your petitioner is advised, and believes, that by reason of the fact aforesaid, the said railroad company and the said complainants, as trustees or mortgagees under the mortgages sought to be foreclosed in said action, have not acquired or perfected any title or right to the possession or control of any of said lands,
798 which this court is competent by its decree to convey to any purchaser, or of which it can give any purchaser possession under its decree in said action, and that therefore any sale which may be made, or attempted to be made, under the said decree without further action of this court, or of the said complainants to secure the title of said lands to vest in said company under the said acts, will be absolutely valueless to the purchaser and wholly unproductive to the complainants; but your petitioner is advised, and believes, that such sale, if made under the provisions of said trust deed or mortgage, and the decree of this court, will cut off and extinguish all the equitable claim, right, and interest of the said La Crosse and Milwaukie Railroad Company, and of all the bondholders claiming an interest therein under your petitioner's said mortgage, and all other creditors thereof, whose liens are subsequent to the lien of said trust deed or mortgage of said complainants in and to all the lands so as aforesaid granted to the La Crosse and Milwaukee Railroad Company.

Your petitioner further represents, upon information and belief, that by the proper proceedings on the part of this court and of the said trustees, complainants, the title to four hundred and eighty sections of the said granted lands may be caused and procured to vest in the said La Crosse and Milwaukee Railroad Company, and to

inure to the benefit of the said trustees under the said trust deed or mortgage; and the same, being made capable of being sold in distinct lots and parcels, will bring a very large sum of money,
799 and, as your petitioner believes, as much as five hundred to eight hundred thousand dollars.

Your petitioner insists, that, inasmuch as it is provided in and by the said act of the legislature of the State of Wisconsin that said land shall be exclusively applied in the construction of the road for which it was granted, and shall be disposed of only as the work progresses, and that said company shall not sell any of said lands until twenty miles of said road shall be completed, so as to admit of running regular trains over the same, and so on from time to time, so that the sales of said lands by said company shall never exceed six sections of land for every mile of said road so completed, it was not the policy of the legislature or the interest of said trust deed or mortgage, of which said act forms a part, to authorize the sale of any part of said lands until the title of the company thereto should be perfected in conformity to said act; and much less was it the policy or design of the legislature to authorize said company, by the instrumentality of a mortgage, to extinguish its entire right and claim to the said granted lands without completing a mile of road or acquiring title to a section of said lands.

Your petitioner further represents, that he is informed, and believes, that the track and line of said road and the real estate and rolling stock conveyed by said trust deed or mortgage are wholly inadequate, without including said granted lands, to pay the principal sum and interest secured, or intended to be secured, thereby; that said granted lands are a collateral security available to the
800 complainants in the said action, but not available to any other creditor of said company; and that by the terms of said trust deed, as well as the general principles of equity, the said complainants are bound first to resort to said collateral security for the payment of said mortgage debt, and to make the same productive and available as far as practicable before resorting to the principal security, upon which the other creditors of the company are obliged to rely solely for the payment of their claims.

Your petitioner further represents, that, under and by virtue of the decree made and entered in the said action on the 16th day of January, 1862, the marshal of the United States for the district of Wisconsin has advertised for sale, at public auction, on the — day of May, 1862, at the post office, in the city and county of Milwaukee, all and singular the lands granted and intended to be granted to the La Crosse and Milwaukee Railroad Company, under and by virtue of the aforesaid act of Congress of June 3d, 1856, and under and by virtue of the aforesaid act of the legislature of the State of Wisconsin approved October 11th, 1856, together with the track or line of said company's railroad, extending from Portage City to the city of La Crosse, and all the fixtures, real estate, and rolling stock belonging to or appertaining to said track or line, and conveyed or intended to be conveyed by said trust deed or mortgage; the lands mentioned

as granted by the United States to be sold first, which sale your petitioner is informed, and believes, the said complainants and the said marshal intend to make, or cause to be made, at the said
801 time and place, and unless restrained by the order of this court he believes and fears that said sale will then and there take place.

Your petitioner further represents, that, as he is advised and verily believes, the said sale or pretended sale of said lands, so as aforesaid granted in and by the aforesaid acts, will not produce any more than the bid of a merely nominal sum, and will not be available to the purchaser, if one is found, for any valuable or practical purpose, but that it will effect, in form at least, a legal and absolute transfer and extinguishment of all the right and claim of the said La Crosse and Milwaukee Railroad Company in and to the whole of said granted lands under the acts aforesaid, and will cause an irreparable injury to the creditors of said company, including the bondholders under your petitioner's mortgage, and also the stockholders, and all persons interested in the appropriation of said lands to the construction of the railroads designated in and authorized by the aforesaid acts, and will lead to innumerable and vexatious suits and interminable litigation in regard to the title, control, and future disposition of said granted lands.

Your petitioner further represents, that he has taken an appeal from the decree of this court made in this action to the Supreme Court of the United States; that such appeal is taken in good faith, and with an honest intention on the part of your petitioner to
802 prosecute the same in said Supreme Court with all possible despatch; that your petitioner, by his said appeal, did not seek to delay this case, but inasmuch as it involves many new and important questions of jurisprudence, your petitioner believes it his duty, as the trustee of the valuable trust, to take the opinion of the highest judicial tribunal upon the questions involved.

Your petitioner therefore prays that an order may be made staying or postponing the said contemplated sale until the title to such portions of said lands as the said company ought equitably to have conveyed to it by reason of its having completed sixty or more continuous miles of its road shall have been procured from the State and made available to the said complainants, and until your petitioner's said appeal shall have been determined. and that your petitioner may have such other or such further relief in the premises as may be just and equitable.

J. A. HELFENSTEIN.

PALMER & STARK and
BUTLER, BUTTERICK & COTTERILL,
Solic. for Helfenstein.

803 UNITED STATES DISTRICT COURT,
District of Wisconsin, ss:

On this 26th day of April, 1862, personally appeared before me J. Albert Helfenstein, the petitioner in the foregoing petition, and

made oath that he has read the said petition by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

EDWARD KURTZ,
U. S. Com'r Dist. Wis.

And on the same day came the defendant, the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed its petition in the words and figures following, to wit:

804 *Petition of Milwaukee and Minnesota railroad.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD and others. } In equity.

To the Hon. Andrew J. Miller, judge of said district court of the United States for the district of Wisconsin:

The undersigned, the Milwaukee and Minnesota Railroad Company, one of the said defendants, humbly petitioning, respectfully shows unto your honor—

That the said Milwaukee and Minnesota Railroad Company is a corporation duly organized, in pursuance and by virtue of the laws of the State, as purchasers upon a sale under the foreclosure of a certain mortgage executed by the said La Crosse and Milwaukee Railroad Company, on the 21st day of June, A. D. 1858, to William Barnes, as trustee, and a certain other mortgage supplementary thereto, both of which have been fully set out in the proceedings in the above-entitled cause, viz: in the petition of A. Fleming, a stockholder in said Mil. & Min. R. R. Co.; and that, by virtue of the sale, purchase, and organization as aforesaid, the said Milwaukee and
805 Minnesota Railroad Company became the successor of the said La Crosse and Milwaukee Railroad Company as to all the property and things described in the said mortgages or deeds of trust, and the owner of and clothed with all the rights, privileges, and franchises, property real and personal, and things in action and effect of every nature and description before them, belonging to the said La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and legal liens and incumbrances thereon as were prior to said mortgage or trust deed to said Barnes.

Your petitioner further represents, that by an act of Congress entitled "An act granting a portion of the public lands to the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, and by an act of the legislature of the State of Wisconsin entitled "An act to grant certain lands to the La Crosse and Mil-

waukee Railroad Company, &c.," approved October 11th, 1856, the said La Crosse and Milwaukee Railroad Company became contingently entitled to have and receive from the general government, through the State of Wisconsin as trustee, a conveyance of land to the amount of about one million of acres, and by the construction of over sixty continuous miles of railroad under the provisions of said acts; and in pursuance thereof the said company became actually entitled to own and possess and to receive deeds for
806 over three hundred thousand acres of said land, definitely selected and specially described, but that by neglect or refusal to take proper action on the part of said railroad company, the State government or the general government, one or more of them, the said three hundred thousand acres of land have never been definitely selected, described, and deeded to the said La Crosse and Milwaukee Railroad Company, and the title of said company to said lands remains inchoate and incomplete.

Your petitioner further represents, that by proper action on the part of the said La Crosse and Milwaukee Railroad Company, and the said complainants in the above-entitled cause, the proper authorities may be brought, without any great delay, to ascertain, select, and convey to the said La Crosse and Milwaukee Railroad Company the land to which it is entitled as before stated and set forth, and your petitioner is ready to do everything incumbent on it to aid in procuring the conveyance of said lands to said company by all the means within the power of this corporation.

Your petitioner further represents, that, under and by virtue of the decree made in the above-entitled cause, on the 16th day of January, 1862, the marshal of this district has advertised for sale at public auction all and singular the lands granted or intended to be granted to the said La Crosse and Milwaukee Railroad Company under
807 and by virtue of the said act of Congress, and the said act of the legislature of the State of Wisconsin, together with the track and other property of the said company, the land to be sold first.

Your petitioner further represents, that should this threatened sale be made while the title of the said La Crosse and Milwaukee Railroad Company to said lands remains inchoate and unsettled, the sale would produce nothing, or a merely nominal sum, and the rights and interests of your petitioner and other creditors of the said La Crosse and Milwaukee Railroad Company would be utterly sacrificed; while, should the sale be postponed until the title to said lands is fully and definitely vested in said company, a large sum of money would be readily realized from a judicious sale of said lands in parcels, &c.

Wherefore your petitioner prays that an order may be made staying such sale, or postponing the same until proper steps have been taken, and the title to said three hundred thousand acres of land has become fully vested in said company, or until it shall be made to appear that after due efforts the title cannot be made good.

And that your petitioner may have such further or other relief in the premises as may be just and equitable.

MILWAUKEE AND MINNESOTA RAILROAD COMPANY,

[illegible] *Vice-P*[illegible]

And on the same day came Charles Howard, assignee, and filed his petition as follows, to wit:

808 *Petition of Cha's Howard against sale.*

District court of the United States, Wisconsin district.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, SEBRE HOWARD *et. al.*

To the Hon. A. G. Miller, judge of the district court of the United States for the district of Wisconsin:

Your petitioner, Charles Howard, who is a citizen and a resident of the State of New York, respectfully represents, that Sebre Howard, who is named as a defendant in the above-entitled action, and who was a citizen and resident of the State of Ohio, departed this life at Cleveland, in said State, on or about the 19th day of March, 1862; that in his lifetime, and on or about the 28th day of November, 1859, in the district court of the United States for the district of Wisconsin, the said Sebre Howard recovered a judgment against the La Crosse and Milwaukee Railroad Company, the principal defendant in the above-entitled action, for the sum of sixteen thousand three hundred and seventy-nine dollars and eighty-six cents, damages and costs, which judgment, duly entered, enrolled, and recorded, still remains unpaid, unreversed, and unsatisfied, as by the records of said district court, reference being thereto had, will more fully appear; that afterwards, and in the lifetime of the said Sebre Howard, for a
809 valuable consideration, the said Sebre Howard sold, assigned, and transferred the said judgment and all his right, title, and interest in and to the same to your petitioner, and your petitioner thereupon became and now is the lawful and sole owner of said judgment.

Your petitioner further represents that he is advised and believes, and therefore claims, that said judgment constitutes an equitable lien upon all the real estate, buildings, fixtures, rolling stock, and other property of said defendant railroad company, recognized in law as real estate subject only to the prior lien of such *bona fide* and lawful mortgages and judgments as are prior in date to his said judgment, and is entitled to be paid out of the said property, or out of the net proceeds arising from the use and operation thereof, whenever such prior *bona fide* and lawful liens shall have been satisfied.

Your petitioner further represents, that by an act of Congress, entitled "An act granting a portion of the public lands to the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, and by an act of the legislature of the State of Wisconsin entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, &c.," approved October 11th, 1856, the said defendant railroad company became contingently entitled to have and

receive from the general government, through the State of Wisconsin, as its trustee, a conveyance of lands to the amount of about one
810 million of acres; which lands, at the time of the execution of the mortgage, or trust deed, for the foreclosure of which the above entitled action is brought, were estimated by said railroad company to be of the value of seventeen millions of dollars; that by the said act of the legislature of the State of Wisconsin it was provided, "that the title to said lands shall vest in the La Crosse and Milwaukee Railroad Company in the manner following, that is to say: whenever twenty continuous miles of the said road shall have been completed so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said land shall vest in the said La Crosse and Milwaukee Railroad Company; and when a second twenty continuous miles of said road shall have been completed so as to admit of running regular trains on the same, the governor shall certify as above, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company, and so from time to time until said roads are completed. And it shall be the duty of the governor so to certify to the Secretary of the Interior whenever any such twenty miles are completed so as to admit of running of regular trains of cars over the same. And the governor of the State shall in his official capacity and in behalf
811 of the State, and under the great seal thereof execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this chapter be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same and so on from time to time, so that the sales by said company shall never exceed six sections of land for every mile of said road so completed;" and that in and by said act it was further provided, that "the location and designation of the route and line of the said road shall be made by the said La Crosse and Milwaukee Railrood Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of this State. The selection of lands provided for in the act of Congress herein mentioned shall be made by such agents as may be appointed by the governor of this State."

Your petitioner further represents, upon information and belief, that soon after the passage of said act the line of said company's railroad was duly located and designated from the city of Madison to Portage City, and from Portage City towards the St. Croix river or lake, a distance of over 100 miles in all, and the same was put
812 under contract; and the same was duly reported to the governor of the State; and that during the years 1857 and 1858 over sixty continuous miles of the said railroad were completed so as to admit of running regular trains on the same from Portage City westward; and the fact was duly reported by the said company to the

governor of this State; and the said company thereupon and thereby became entitled to have such fact certified by the governor of the State, and to the Secretary of the Interior of the United States, in pursuance of said act, and to have the title to four hundred and eighty sections of said granted lands vested in the said La Crosse and Milwaukee Railroad Company, and to have a conveyance of the same.

But your petitioner is informed and believes that the said La Crosse and Milwaukee Railroad Company has hitherto neglected or failed to procure from the governor of the State the requisite certificate or certificates to the Secretary of the Interior to cause or procure the title to any of said lands to vest in said company, under the provisions of said acts, and in consequence thereof the said company has not yet acquired, as it might and ought to have done, the title to any part or parcel of said lands; and your petitioner is advised and believes that, by reason of the facts aforesaid, the said rail-
813 road company and the said complainants, as trustees or mortgagees, under the mortgage sought to be foreclosed in said action, have not acquired or perfected any right or title to any of said lands, which this court is competent, by its decree, to convey to any purchaser, or of which it can give any purchaser possession under its decree in the said action; and that therefore any sale which may be made or attempted to be made under the said decree, without further action of this court or of the said complainants to secure the title of said lands to vest in said company under the said acts, will be absolutely valueless to the purchaser, and wholly unproductive to the complainants.

But your petitioner is advised and believes that such sale, if made under the provisions of said trust deed or mortgage, and the decree of this court, will cut off and extinguish all the equitable claim, right, and interest of the said La Crosse and Milwaukee Railroad Company, and of your petitioner, and all other creditors thereof whose liens are subsequent to the lien of said trust deed or mortgage, in and to all the lands so as aforesaid granted to the La Crosse and Milwaukee Railroad Company.

Your petitioner further represents, upon information and belief, that by the proper proceedings on the part of this court and of the said complainants, trustees, the title to four hundred and
814 eighty sections of the said granted lands may be caused and procured to vest in the said La Crosse and Milwaukee Railroad Company, and to inure to the benefits of the said trustees, under their said trust deed or mortgage; and that the same being thus made capable of being sold in distinct lots and parcels will bring a very large sum of money, and, as your petitioner believes, as much as eight hundred thousand dollars.

Your petitioner insists, that, inasmuch as it is provided in and by the said act of the legislature of the State of Wisconsin "that said land shall be exclusively applied in the construction of that road for which it was granted and selected, and *shall be disposed of only as the work progresses*," and "that said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit

of running regular trains over the same, and so on from time to time, so that the sale of land by said company shall never exceed six sections of land for every mile of said road so completed," it was not the policy of the legislature or the intention of said trust deed or mortgage, of which said act forms a part, to authorize the sale of any part of said lands until the title of the company thereto should be perfected in conformity to said act; and much less was it the policy or design of the legislature to authorize said company, by the instrumentality of a mortgage, to extinguish its entire right and claim to the said granted lands without completing a single mile of road
815 or acquiring title to a single section of said lands.

Your petitioner further represents that he is informed and believes that the track and line of said railroad and the real estate and rolling stock conveyed by said trust deed or mortgage are wholly inadequate, without including said granted lands, to pay the principal sums and interest secured or intended to be secured thereby; that said granted lands are a collateral security, available to the complainants in said action, but not available to any other creditors of said railroad company; and that by the terms of said trust deed, as well as by the general principles of equity, the said complainants are bound to resort first to said collateral security for the payment of said mortgage debt, and to make the same productive and available as far as practicable before resorting to the principal security upon which the other creditors of the company must rely solely for the payment of their claims.

Your petitioner further represents that under and by virtue of the decree made and entered in the said action on the 16th day of January, 1862, the marshal of the United States for the district of Wisconsin has advertised for sale at public auction, at the post office in the city and county of Milwaukee, "all and singular the lands granted or intended to be granted to said La Crosse and Mil-
816 waukee Railroad Company under and by virtue of the aforesaid act of Congress, approved June 3, 1856, and under or by virtue of the aforesaid act of the legislature of the State of Wisconsin, approved October 11, 1856, together with the track or line of said company's railroad, extending from Portage City to the city of La Crosse, and all the fixtures, real estate, and rolling stock belonging or appurtenant to said track or line, and conveyed or intended to be conveyed by said trust deed or mortgage. The lands mentioned as granted by the United States to be sold first; which sale your petitioner is informed and believes the said complainants and the said marshal intended to make or cause to be made at the said time and place; and, unless restrained by the order of this court, he believes and fears said sale will then and there be made.

Your petitioner further represents that, as he is advised and verily believes, the said sale or pretended sale of the lands, so as aforesaid granted in and by the aforesaid acts, will not produce any more than the bid of a merely nominal sum, and will not be available to the purchaser, if one is found, for any practicable or valuable purpose; but that it will effect, in form at least, a legal and absolute transfer

and extinguishment of all the right and claim of the said La Crosse and Milwaukee Railroad Company in and to the whole of said
817 granted lands, under the acts aforesaid, and will cause an irreparable injury to the creditors of said company, including your petitioner, and also the stockholders and all persons interested in the appropriation of said lands to the construction of the railroads designated in and authorized by the aforesaid acts; and will lead to innumerable and vexatious suits and interminable litigation in regard to the title, control, and future disposition of said granted lands.

Your petitioner, therefore, prays that an order may be made staying or postponing the said contemplated sale, until the title to such portion of said lands as the said company equitably ought to have conveyed to it by reason of its having completed sixty or more continuous miles of its road, shall have been procured from the State and made available to the said complainants, or that your petitioner may have such other or such further relief in the premises as may be just and equitable.

CHARLES HOWARD.
By his attorney, LEVI HUBBELL.

STATE OF WISCONSIN,
District of Wisconsin, ss:

LEVI HUBBELL, of the city of Milwaukee, in said district, be-
818 ing duly sworn, deposes and says that Charles Howard, the petitioner named in the foregoing petition, is a resident of the city and State of New York, and as this deponent is informed and believes is not within the State of Wisconsin; that this deponent is the attorney of record of Sebre Howard, the judgment creditor named in the said petition, and also the attorney of said petitioner, and that, as such attorney, he became acquainted with the facts stated in said petition; that he has heard said petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes said petition to be true.

LEVI HUBBELL.

Subscribed and sworn to before me this 25th April, 1862.
FR. BLOODGOOD,
Court Comissn.

And on the same day came Isaac Seymour and others as holders and trustees of three millions eight hundred thousand dollars of the bonds included in this decree, and presented and filed their petition, praying that a reference may be had to State account of receipts and disbursements by the receiver of the road between the east and west ends of the road as mortgaged, and praying that no more
819 money be paid by the receiver on the east end until such account be taken. And praying that no more interest be paid on the first mortgage until the mortgagees in this decree be paid in ir full proportion of the revenues of the road, as follows to wit:

820 *Petition of Vose, James et als.*

United States District Court for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*

Your petitioners, Isaac Seymour, Horace Galpin, Francis Vose, Fred. P. James, D. M. Hughes, B. F. Dawson, and William Gould, would respectfully represent that they are the holders, either in their own right or as trustees for others, of over $3,800,000 in amount of the four million dollars worth of bonds described in the complaint in this action. That the division of the earnings of the entire La Crosse railroad, made by the receiver, as contained in his published report, is grossly unjust and inequitable to the bondholders secured by the mortgage on the west division, which are held by your petitioners. That, although the division so made is unfair and unjust to said bondholders, yet in the actual distribution which has been made of the net earnings of said road while in the hands of said receiver, said bondholders have received but a small moiety of the proportion of said earnings so apportioned to the division of said road covered by the mortgage mentioned in the bill of complaint; that, accord-

821 ing to the division so made by said receiver, the western division has earned nearly three-tenths of the whole amount earned on said road, while the payments made on account of said western division and to the bondholders secured by the mortgage thereon out of the net earnings, is less than one-fifth of the amount which has been paid on account of the eastern division.

That the sum of only $81,408 20 has been paid by the receiver for and on account of the western division from said net earnings, while the sum of $333,884 54 has been paid for and on account of the east division from the same source.

That your petitioners are informed and believe that the receiver is about to make very large expenditures on the east division of said road in renewing the track and rebuilding said road, and that a large part of the income of said road for the coming year will be used for that purpose.

Your petitioners therefore pray, that a reference may be had to state an account between the east and west divisions of said road.

That no more money may be paid out or disbursed by said receiver for and on account of said east division, except for necessary operating expenses, until there shall have been paid to the bondholders secured upon said west division an amount proportioned to the amount already paid for and on account of said east division.

822 That all orders heretofore made directing said receiver to pay the interest on the first mortgage on the east division and on the city mortgages may be revoked, and that no further pay-

ments be made thereon until the creditors of the west division shall have received their just proportion of the receipts of said road, and that thereafter said interest shall be paid only out of the net earnings of the east division of said road, after reserving to the west division its just proportion.

And for such other relief and such further relief as to this court shall seem meet and agreeable to equity. And your petitioners will ever pray, &c.

CARY & PRATT,
Solicitors for Petitioners.

And afterwards, on the 12th day of May, 1862, came the parties, by their counsel, and the petition of Isaac Seymour and others having been argued, it is thereupon ordered by the court that the prayer for the appointment of a receiver be, and hereby is, denied. And it is further ordered by the court that the receiver make a detailed report of all his receipts as such receiver, and of all his disbursements out of the same. And that he state the relative amounts of the revenues of the road as to the two ends of the road as mortgaged, and of his disbursements for each end respectively.
823 And further, that he report the amount of rolling stock purchased by him, and the proportion thereof as applicable to said ends of the road respectively.

And as the receipts and disbursements of the receiver shall be adjusted before the sale, it is ordered by the court that the marshal adjourn the sale under this decree until Monday, the twenty-eighth day of July next, at the same place, and that he continue the advertisements of sale accordingly. And the several petitions for an order to adjourn the sale having been argued, the court took time to consider of the same.

May 20, 1862. Receiver's report for month of April, 1862, filed.

June 20, 1862. Receiver's report for month of May, 1862, filed.

July 18, 1862. Receiver's report for month of June, 1862, filed.

August 22, 1862. Receiver's report for month of July, 1862, filed.

September 23, 1862. Receiver's report for month of August, 1862, filed.

September 24, 1862. This day came J. Albert Helfenstein and others, and filed their petition, in the words and figures following, to wit:

824 *Petition of Graham & Scott, Helfenstein, Milwaukee and Minnesota Railroad, and Chas. Howard, asking postponement of sale.*

District Court of the United States for the district of Wisconsin.

GREEN C. BRONSON, SHEPHERD KNAPP, and JAMES T. SOUTTER, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, J. ALBERT HELFENSTEIN, LAURENCE G. GRAHAM, DONALD D. SCOTT, CHARLES HOWARD, assignee of SEBRE HOWARD, and others. } In chancery.

To the Hon. Andrew G. Miller, judge, &c.:

The petition of Laurence G. Graham, J. Albert Helfenstein, Donald D. Scott, The Milwaukee and Minnesota Railroad Company, and Charles Howard, assignee of Sebre Howard, respectfully represents that they are each and all defendants in the above entitled cause, and that their respective interests appear from the records and papers herein. That the sale under the decree heretofore rendered in this cause was, as your petitioners are informed and believe, originally advertised to take place on the 22d day of May, A. D. 1862, and on that day postponed to the 28th day of July, A. D. 1862, and on the last-named day further postponed until
825 the 2d day of October, A. D. 1862, on which latter day your petitioners are informed, and believe, the complainants intend to have such sale made pursuant to said decree. And your petitioners further represent that, as appears from the records and papers in their cause, there are many distinct and different interests involved in the subject-matter of this suit, and in the property and franchises affected thereby, and that the same now exceed upwards of four millions of dollars in amount, but that no one interest, as your petitioners are informed and believe, exceeds the sum of about two millions of dollars in amount. And your petitioners further represent that, by the terms of the said decree, the bonds secured by the mortgage, described in the bill of complaint in this cause, are to be received in part payment of the proceeds of such sale in lieu of money; that the situation of the country in respect to financial resources is such that it is not all probable, and indeed in may be said to be absolutely certain that at such sale, if the same shall take place on the 2d day of October aforesaid, there will be present no bidder or bidders whatever, who will be prepared to bid any considerable sum in money, or any sum whatever, in fact, of money, bonds, or other thing which will even approximate to the amount decreed to be due upon the mortgage which this suit is brought
826 to foreclose, including the amounts due to your petitioners, and for which they have liens upon said mortgaged property.

And these petitioners further represent, that, in case of a sale of said mortgaged premises on the 2d day of October next, there will be no persons whatever present thereat, as they are informed and believe, except the parties interested therein, and that, in the present state of the country, there will be no bids made at such sale except by the holders of the first 1991 bonds, and that any bid by them made will be made in said bonds, and not in money.

And your petitioners verily believe that it is not expected or contemplated that any bids will be made at such sale except in each bonds; that in case such sale shall take place, it will be necessary for all the junior encumbrancers of said property to submit to an entire sacrifice of their interests in said mortgaged property, and suffer the same to be sold for the amount in bonds of the first-decreed encumbrance thereon; that it will be impossible for your petitioners and the other junior encumbrancers of said property to prevent such sacrifice, for the reason that, in the present disordered condition of financial matters in the country, it will be impossible for them to raise and bid the amount in money necessary to pay off the adjudged prior liens upon said property. And your petitioners further represent, that in actual cost and value the said mortgaged premises far exceed

827 the amount of the first liens thereon, as decreed by the court that in case of a sale for even the full amount of such first lien thereon, will be a total and ruinous sacrifice of the interests of your petitioners.

And your petitioners further represent, that said mortgaged property is so large in value, and of so peculiar a nature in itself, that, in justice and equity, and having a due regard to the interests of all parties concerned, no forced sale against the wishes of any of such interested parties ought to be made or allowed to be made by the court, for the reason, among others, that such forced sale must necessarily result in the total destruction of some one at least, and probably more, of the interests therein involved, or in forcing the holders of latter liens to raise and bid in money at such sale a sum which, in these times, may almost be termed fabulous. And your petitioners further represent that, after a diligent inquiry, they have been unable to learn of any instance where any forced sale has been made of any railroad and its franchises in this country, or where any such sale at all has been made, except by an arrangement between the different parties having liens thereon, and that such arrangements have always been made with a view to a reorganization of a new corporation, in which the interests of all parties should be protected.

And your petitioners verily believe that there has been no

828 foreclosure sale in this country of any railroad and its franchises, where the property has been put up at auction for cash, or where there has been any opposition thereto by the lienholders interested therein, or where there has in fact been any cash bid by or required from the purchaser at such sale. And your petitioners believe that such fact has arisen solely from the peculiar nature of railroad property and franchises, and from the immense values involved therein.

Your petitioners are further informed and believe that, in the case of the New York and Erie railway, having upwards of four hundred miles of track, and upon which were five distinct mortgages, amounting, with the capital stock thereof, to upwards of thirty-six millions of dollars, the property of said company was allowed to be sold only upon an arrangement being made by which the stock and all the liens thereon should be fully protected; that in the case of the Wabash Valley railroad, having upward of two hundred miles of track, the property of said company was sold under a similar arrangement; that the same is true in regard to the Pittsburg, Fort Wayne, and Chicago Railroad Company, having upwards of four hundred miles of track; the Ohio and Mississippi Railroad Company, having upwards of three hundred miles of track; the St. Louis, Alton, and Chicago Railway Company, having some two hundred and forty miles of track;
829 the Chicago and Northwestern Railway Company; the Covington and Lexington railroad, and others which your petitioners could mention. And your petitioners further represent that the same facts are true with reference to railroad foreclosures that have taken place in this State, namely: upon the Milwaukee and Mississippi and the Mineral Point railroads. And your petitioners are informed and believe that even the rendering of a decree in the case now pending in this court to foreclose the first mortgage upon the Milwaukee and Horicon railroad has been from time to time resisted and deferred in order to enable the different lien-holders to accommodate and arrange their interests amicably.

Your petitioners further represent that there are grave doubts existing in regard to the regularity of the advertisement of sale in this cause, and particularly so in regard to the adjournment of said sale from the 28th day of July, A. D. 1862, to said 2d day of October; that your petitioners are advised that, by reason of the recent act of Congress, constituting among other things the State of Wisconsin a part of the eighth judicial circuit of the United States, said adjournment on said 28th day of July being in the nature of a judicial act in law emanating directly from the court, and one which the court had then no jurisdiction to perform the same, is therefore void, and that a sale pursuant to such adjournment will be void, and will convey no title to the purchaser. And your petitioners further represent
830 that they are advised that, even if a valid sale of said property can be made on said 2d day of October, it is questionable whether there can be any confirmation thereof until the January term, A. D. 1863, of this court; and your petitioners believe that prior to that time some arrangement of the different interests represented in their suit can be made.

Your petitioners further represent that they believe that the interest of no one of the parties having liens upon said property will or can be seriously impaired or prejudiced by the postponement of such sale for three months at least, but rather that the interests of all parties will be forwarded and protected by such postponement. Your petitioners further represent that there has already been great and expensive litigation among the various parties interested in said

mortgaged premises, and they believe while a sale on the 2d day of October next will tend to prolong the present and excite greatly future litigation, an adjournment of such sale with a view to the accommodation of all interests involved would save much contest and expense in the future, and tend greatly, if not entirely, to the preservation and protection of all such interests.

Your petitioners further represent that appeals have been taken to the Supreme Court of the United States from the decree herein, and they believe that the same will be duly presented, unless some
831 arrangement of the different liens is made; that a sale of said property on the 2d day of October, A. D. 1862, will prevent such an arrangement from being made, and will in itself necessitate an energetic prosecution of such appeals, and, as your petitioners verily believe, will greatly complicate the whole present litigation.

Your petitioners further reprs-ent that they are now and have always been willing to make a fair and reasonable adjustment of their interests with the other parties having liens upon said property, and they therefore pray that an order may be made directing a postponement of said sale until some time after the first Monday of January, A. D. 1863. And they will ever pray, &c.

J. ALBERT HELFENSTEIN,
By BUTLER, BUTTRICK & COTTRELL and PALMER & STARK, his Sols.
MAT. H. CARPENTER,
For the Milwaukee and Minnesota Railroad Company.
LAURENCE G. GRAHAM,
DONALD D. SCOTT,
LEVI HUBBELL,
For HOWARD, by CARPENTER, of Counsel, their Solicitor.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

Moses Kneeland, being duly sworn, says that he is the president of the defendant, the Milwaukee and Minnesota Railroad Company; that he has heard the foregoing petition read, and knows the contents thereof, and that the same is true of his own knowledge,
832 except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

MOSES KNEELAND.

Sworn and subscribed to this 24th day of September, 1862, before me.

J. P. C. COTTRELL,
U. S. Commissioner, Wisconsin.

Which petition is indorsed as follows, to wit:

"Sept. 24, 1862. This petition is not entertained.
"A. G. MILLER, *Judge.*"

October 3, 1862. Report of receiver, showing earnings and expenditures from June 10, 1860, to 31st August, 1862, filed, in the words and figures following, to wit:

833 U. S. D. court for the district of Wisconsin.

GREENE C. BRONSON and others
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD and others. } In chancery.

To the Hon. A. G. Miller, judge of said court:

In pursuance of an order of this court, bearing date 12th May, 1862, requiring me to make a detailed report of all receipts and disbursements, I respectfully report:

Total gross earnings from 11th June, 1860, to 31st August, 1862		$2,189,451 03
Total expenditures for same time		2,140,776 84
Earnings eastern division		1,522.070 17
Do western do		663,380 86
Local expenses eastern division		311,628 13
Do do western do		210,383 29
Total mileage of trains	miles.	1,190,642
Eastern division	681,843 "	
Western do	508,800 "	
Total cost of mileage		803,720 58
" " eastern division	$460,277 24	
" " western do	343,443 34	
Total extraordinary expenditures		784,778 27
Eastern division	567,950 85	
Western do	216,827 42	

There has expended for fencing, bridging, and new buildings, which has not been divided between the two divisions, $30,266 37.

834 *Rolling stock.*

The expenditures for rolling stock for the same period are, $158,269 85. Eight locomotive engines and eighty-four freight cars have been purchased; and one hundred freight, two passenger cars, and one wrecking and pile-driving car, have been built at the company's shops.

In the absence of any agreement between the parties representing the two sections of the road as to the division of earnings and expenditures, I have made the following divisions:

All through receipts are divided by giving 105 parts to the western and 95 parts to the eastern division. All business commencing and terminating on any division is credited to that division. All other business is divided *pro rata* per mile.

I have divided the expenditures into local, mileage, and extra-

ordinary—local referring to the division of the road upon which they accrue. The local expenditures embrace machinery, tools, repairs of buildings, grading, road repairs, bridges, removal of track, &c.

The mileage expenditures embrace locomotive and car repairs; locomotive and train service, fuel, oil, and waste; printing, stationery, passenger agencies, salaries, and miscellaneous. The extraordinary expenditures applicable to each division will appear in the accompanying schedule.

The division of earnings and expenditures may not be the proper one; but, in the absence of any agreement between the parties or any agreed basis of division, I know of no other mode I could have adopted. In my first annual report I stated, "It is not for me to determine the proportion of net earnings belonging to each division; that question must be determined by the court, or by the agreement of parties who may hereafter become the owners of the two divisions of the road."

Very respectfully,

H. CROCKER, *Rec.*

835 *Statement showing the earnings and expenditures of the eastern and western divisions of the La Crosse and Milwaukee railroad, for the month of August, 1862, as operated by H. Crocker, receiver; made in pursuance of an order of court, dated May 12, 1862.*

Total earnings.	Earnings east'n div'n.	Earnings west'n div'n.	Local exp. east'n div.	Local exp. west'n div.	Mileage east'n div.	Mileage west'n div.	Total mileage.	Total cost mileage.	Average cost.
68,673 02	47,927 88	20,745 14	10,750 72	5,629 10	23,595	18,060	41,655	25,574 33	61.395 cts.

OTHER EXPENDITURES.		
Right of way		68 00
Incumbrances	16 75	
La Crosse depot extension		160 97
Renewal of track	1,000 62	
Rolling stock	726 03	803 45
Coupons, 1st mort'g b'ds	2,085 20	
" Mil. city "	315 79	
Grading, paving, &c	2,786 91	
	$6,932 20	1,032 42
Expended on following accounts in August, no division made:		
Bridging	$2,641 45	
Fencing	633 76	
New buildings	2,143 66	
	$5,418 87	

RECAPITULATION.		
Eastern division.		
Earnings		47,927 88
Local expenses	10,750 72	
Other do	6,932 20	
Mileage, 23,595 *a* 61.395	14,487 15	
		32,170 07
Excess		15,757 81
Western division.		
Earnings		20,745 14
Local expenses	5,629 10	
Other do	1,032 42	
Mileage, 18,060 *a* 61.395	11,087 18	
		17,748 70
Excess		2,996 44

836 *Statement showing the earnings and expenditures of the eastern and western divisions of the La Crosse and Milwaukee railroad, from July 1 to 31, 1862, as operated by H. Crocker, receiver; made in pursuance of an order of court, dated May 12, 1862.*

	Total earnings.	Earnings east'n div'n.	Earnings west'n div'n.	Local exp's east'n div'n.	Local exp's west'n div'n.	Mileage east'n div'n.	Mileage west'n div'n.	Total mileage.	Total cost mileage.	Average per mile.
July 1 to 31	$91,459 50	$60,856 39	$30,603 11	16,907 22	12,314 03	32,569	24,150	56,717	34,192 22	60.283 cts.

OTHER EXPENDITURES.		
Right of way	120 30	30 00
Incumbrances		
La Crosse depot extension		767 74
Renewal of track	5,142 74	
Rolling stock	63 72	70 43
Coupons, 1st mortgage	33,746 05	
" Mil. city	35 10	
Grading, paving, &c	1,169 53	
	40,277 44	868 17
Expended on following accounts in July. No division made:		
Bridging	4,554 34	
Fencing	2,214 56	
New buildings	4,567 54	
	$11,336 44	

RECAPITULATION.		
Eastern division.		
Local expenses	16,907 22	
Other do	40,277 44	
Mileage, 32,569 *a* 60.283	19,633 77	
		76,817 99
Earnings		60,856 39
Deficit		15,961 60
Western division.		
Earnings		30,603 11
Local expenses	12,314 03	
Other do	868 17	
Mileage, 24,150 *a* 60.283 cts	14,558 45	
		27,741 65
Excess		$2,861 46

... *Milwaukee railroad, from*

837 *Statement showing the earnings and expenditures of the eastern and western divisions of the La Crosse and Milwaukee railroad, from June 11, 1860, to June 30, 1862, as operated by H. Crocker, receiver; made in pursuance of an order of court, dated May 12, 1862.*

	Total earnings.	Earnings east'n div'n.	Earnings west'n div'n.	Local exp's east'n div'n.	Local exp's west'n div.	Mileage east'n div'n.	Mileage west'n div'n.	Total mileage.	Total cost mileage.	Average cost per mile.
June 11 to Decem'r 31, 1860	512,212 86	358,246 57	153,966 29	57,913 55	48,248 27	1,459 13	1,071 77	2,530 90	151,818 18	.....
Jan'y 1 " " " 1861	1,070,821 86	749,951 33	320,870 53	164,920 07	96,497 99	3,286 69	2,505 80	5,792 49	378,800 39	.....
" " June 30, 1862	446,283 79	305,088 00	141,195 79	61,136 57	47,693 90	1,510 97	1,088 34	2,599 31	213,335 36	.....
	2,029,318 51	1,413,285 90	616,032 61	283,970 19	192,440 16	6,256 79	4,665 91	10,922 70	743,953 93	68 111-1000 ct.

OTHER EXPENDITURES.

Right of way	13,065 37	12,840 29
Incumbrances	35,573 49	29,115 80
Taxes	16,964 97	7,115 04
Legal expenses	1,381 93	2,383 04
La Crosse elevator		10,265 29
New buildings	7,435 81	
Fencing	9,500 95	19,001 98
La Crosse depot extension		9,991 49
Ballasting track	9,177 40	
Renewal of do	36,802 55	
Rolling stock	74,387 62	82,217 70
Coupons, 1st mortg	157,568 98	
Do. City Mil. bonds	66,520 44	
Exchange and commissions	4,867 13	2,364 87
Cleveland judgment	58,801 92	
Interest on land grant mortg		45,000 00
Loss and damage pd by order of court	700 00	
Fox lake station building	587 26	
Milwaukee " "	8,365 51	
Sinking fund mortg	12,000 00	
Pd on Helfenstein do		3,451 33
Fire insurance	2,039 98	180 00
Foreclosure expenses, 2d mortg	5,000 00	
	520,741 31	214,927 03
There has been expended on the following accounts in 1862—no division made:		
Fencing		6,608 93
Bridging		6,902 13
		$13,511 06

RECAPITULATION.

Eastern division.		
Earnings		1,413,285 90
Local expenses	283,970 19	
Other do	520,741 31	
Mileage, 6,256.79 *a* 68 111-1000 cts	426,156 22	
		1,230,867 72
Excess		182,418 18
Western division.		
Local expenses	192,440 16	
Other do	214,927 03	
Mileage, 4,665.91 *a* 68 111-1000	317,797 71	
		725,164 90
Earnings		616,032 61
Deficit		109,132 29

838 In circuit court, October 6, 1862.—This day came the marshal and made report of sale as follows, to wit:

In the circuit court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAS. T. SOUTTER, and SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Tuft, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southerland, E. Haskett Derby,
839 Frederick Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higginbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, and John Nicholson.

In chancery.

I, Darius C. Jackson, marshal for the district of Wisconsin, hereby report, that, in pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, as directed in said decree, I gave notice of the time and place of sale, by publication once in each week for three months, in the La Crosse Weekly and Tri-weekly Democrat, a newspaper published in the city of La Crosse, and in the Evening Post, a newspaper published in the city of New York, (a printed copy of said notices and the affidavits of publication are hereto annexed and referred to as a part of this report,) and I did, at the time and place mentioned in said printed notice, to wit, on the 22d day of May, in the year 1862, at two o'clock, at the post office in the city of Milwaukee, then and there open and adjourn the sale until the 20th day of July, A. D. 1862; and that on the day and year last aforesaid I did again open and adjourn said sale until the 2d day of October, A. D. 1862, upon which day, at 2 o'clock p. m., at the post office, in the city of Milwaukee, first offer for sale and sell at public auction the premises described in said decree as follows, to wit:

All and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of an act of Congress of the United States, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, A. D. 1856, and under and by virtue of an act of the legislature of the State of Wisconsin, approved October 11, A. D. 1856, entitled 'An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, A. D. 1856, so far as the said lands pertain or are applicable to the construction of said road from Madison, by way of Portage City, to St. Croix river or lake, estimated to be about one million of acres of lands in the State of Wisconsin, which were bid off by Isaac Seymour, Fred. P. James, and N. A. Cowdrey, for the sum of one hundred thousand dollars, ($100,000,) they being the highest and best bidder, and that being the highest and best bid made for the premises described.

839½ And I there offered for sale and sold in like manner the balance of the premises and property described in said decree, as follows, to wit: All and singular the several tracts, pieces, or parcels of land which constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships 25 and 31, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have been procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been procured for or used in connexion with said roads, or either of them, and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description relating to said roads, they being the highest and best bidders, and that being the highest and best bid made for the premises last above described.

840 The rolling stock hereinbefore mentioned was sold subject to the lien of mortgages executed prior to the 31st day of December, A. D. 1856, except forty box-cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and except such proportion and share of said rolling stock purchased and procured by the receiver costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue

of the portion of railroad of the La Crosse and Milwaukee railroad Company hereinbefore mentioned and described, bears to the balance or other end of said road, since the appointment of the re-
841 ceiver, which said forty box-cars and said proportion of rolling stock purchased by the receiver were sold, free and clear of any incumbrance whatever, in the State of Wisconsin, which was bid off by Isaac Seymour, Fred. P. James and N. A. Cowdrey for the sum of seventeen hundred thousand dollars, ($1,700,000,) they being the highest and best bidders, and that being the highest and best bid made for the premises last above described.

And I further report that afterwards, and on the same day,
842 the said Isaac Seymour, Fred. P. James and N. A. Cowdrey appeared and stated that they desired to increase their said bid for the property last above described to the sum of two millions of dollars, and paid that amount to me as hereinafter reported.

Twenty-one hundred thousand dollars, the aggregate of both of said bids, is $0.75145 on each dollar of the principal of the bonds secured by the said mortgage as allowed and fixed by the decree in this cause; and I further report that of such bids the purchasers, Isaac Seymour, Fred. P. James and N. A. Cowdrey paid to me two millions nineteen thousand eight hundred and ninety-five dollars and fifty-three cents ($2,019.895 43) in bonds secured by said mortgage, as follows:

Nineteen hundred and thirty-six (1,936) of said bonds, numbered between 1 and 1991, inclusive, for one thousand dollars each, and eighteen hundred and thirty-four (1,834) of said bond for one thousand dollars each, numbered between 1992 and 3950, inclusive, and forty-six of said bonds for five hundred dollars each, numbered from 1 to 100 inclusive, and eighty thousand one hundred and four dollars and fifty-seven cents in cash ($80,104 57,) which is $0.75145 on the dollar of the principal of all of the bonds outstanding secured by said
843 mortgage.

D. C. JACKSON,
U. S. Marshal.

STATE OF WISCONSIN,
La Crosse County, ss:

M. M. Pomeroy, of the city of La Crosse, being duly sworn, deposes and says that he is the editor and publisher of the La Crosse tri-weekly and weekly Democrat, a newspaper printed and published in the city of La Crosse; that the notice of which the annexed, without the notices of adjournment thereunder, is a printed copy, has been regularly published in the said La Crosse Democrat once in each week for thirteen weeks successively, commencing on the 7th day of February, A. D. 1862; that the said notice, together with the first of said notices of adjournment, has been regularly published in said paper once in each week for ten weeks successively, commencing on the 23d day of May, 1862; and that said notice, together with both of said notices of adjournment, has been regularly published in said paper for eight times, weeks successively, commencing on the 5th day of August, 1862.

M. M. POMEROY.

Sworn to before me this 2d day of October, 1862.
ANGUS CAMERON,
844 *Notary Public for La Crosse County, Wisconsin.*

United States marshal's sale.

District court of the United States, district of Wisconsin.—In equity.

GREEN C. BRONSON, JAMES T. SOUTTER, AND SHEPERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Santhoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman and John Nicholson.

845 In pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin on the 13th day of January, A. D. 1862, in the above-entitled cause, I shall sell, at public auction, at the post office in the city and county of Milwaukee, in said district, on the 22d day of May, A. D. 1862, at two o'clock in the afternoon, the following described mortgaged property, to wit:

All and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said railroad company, from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said road, whether now made or to be made hereafter. And all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now

built and made, or to be built and made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been, or may hereafter be, procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been, or may hereafter be, procured for or used in connexion with said roads, or either of them. And also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said road.

Also all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3, 1856,
846 and under or by virtue of an act of the legislature of the State of Wisconsin, approved October 11, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1856," so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of lands, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands or real estate above mentioned and described. The rolling stock hereinbefore mentioned is to be sold, subject to the lien of mortgages executed prior to the 31st day of December, A. D. 1856, except forty box-cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 268, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 292, 394, 396, 398, 400, 402, 404, 406, and 408, and such portion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad Company, hereinbefore mentioned and described, bears to the balance or other end of said road, since the appointment of the receiver; which said forty box-cars and said proportion of rolling stock purchased by the receiver are to be sold free and clear of any incumbrance whatever.

The lands hereinbefore mentioned as granted by the United States will be first sold, and if a sufficient sum shall not be realized
847 therefrom to pay the amount adjudged to be due to the complainants for interest, together with costs, then the balance of the mortgaged property hereinbefore mentioned and described will be sold, and upon this sale the bonds secured by the mortgage described in the bill of complaint in this cause will be received in part payment of the proceeds of such sale in the proportion which each bond, at the principal thereof, for the amount thereof, according to

this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

D. C. JACKSON,
U. S. Marshal.

CARY & PRATT,
Solicitors for Complainants.

Postponement.

MILWAUKEE, *Feb.* 1, 1862.

The above sale is hereby adjourned to Monday, the 28th day of July, 1862, at the same hour and place as above.

DARIUS C. JACKSON,
U. S. Marshal.

MARSHAL'S OFFICE, MILWAUKEE,
May 22, 1862.

The above sale is hereby further adjourned to Thursday, the 2d day of October, 1862, at the same hour and place as above.

DARIUS C. JACKSON,
U. S. Marshal.

MILWAUKEE, *July* 28, 1862.

848 CITY AND COUNTY OF NEW YORK, *ss:*

Henry Dithmar, of the city of New York, being duly sworn, says that he is foreman in the office of the "Evening Post," a daily newspaper printed and published in the city of New York; that the notice of which the annexed, without the notices of adjournment thereunder, is a printed copy, has been regularly published in the said "Evening Post" once in each week for thirteen weeks successively, commencing on the 15th day of February, 1862; that the said notice, together with the first of said notices of adjournment, has been regularly published in said paper once in each week for nine weeks successively, commencing on the 24th day of May, 1862; and that said notice, together with both of said notices of adjournment, has been regularly published in said paper for nine weeks successively, commencing on the 2d day of August, 1862.

HENRY DITHMAR.

Sworn to and subscribed the 27 day of September, in the year one thousand eight hundred and sixty-two, before me.

[SEAL.]

JOHN BUTCHER,
Commissioner for the State of New York, appointed by the governor of the State of Wisconsin to administer oaths and affirmations and to take acknowledgments of deeds, &c.

849 *United States marshal's sale.*

District court of the United States, district of Wisconsin.—In equity.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPERD KNAPP, trustees,

vs.

LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen. James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, and John Nicholson.

In pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin on the 13th day of January, A. D. 1862, in the above-entitled cause, I shall sell, at public auction, at the post office in the city and county of Milwaukee, in said district, on the 22d day of May, A. D. 1862, at 2 o'clock in the afternoon, the following described mortgaged property, to wit:

850 All and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said railroad company, from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said road, whether now made or to be made hereafter. And all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made or to be built and made hereafter. And also all and singular the locomotive engines and other

rolling stock and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be, procured for or used in connexion with said roads, or either of them. And also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said road.

Also all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3, 1856, and under or by virtue of an act of the legislature of the State of Wisconsin, approved October 11, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1856,"
851 so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of lands, together with all and singular the hereditaments and appurtenances belonging or in any way appertaining to the lands and real estate above mentioned and described. The rolling stock herein before mentioned is to be sold, subject to the lien of mortgages executed prior to the 31st day of December, A. D. 1856, except forty box-cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 268, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 292, 394, 396, 398, 400, 402, 404, 406, and 408, and such portion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of the railroad of the La Crosse and Milwaukee Railroad Company, hereinbefore mentioned and described, bears to the balance or other end of said road, since the appointment of the receiver, which said forty box-cars and said proportion of rolling stock purchased by the receiver unto or sold for and clear of any incumbrance whatever.

The lands hereinbefore mentioned as granted by the United States will be first sold, and if a sufficient sum shall not be realized therefrom to pay the amount adjudged to be due to the complainants for interest, together with costs, then the balance of the mortgaged property hereinbefore mentioned and described will be sold,
852 and upon this sale the bonds secured by the mortgages described in the bill of complaint in this cause will be received in part payment of the proceeds of such sale, in the proportion which each bond, at the principal thereof, for the amount thereof, according to this decree (that is, the first nineteen hundred and ninety-one

bonds at par, and the remainder at four hundred dollars on the thousand dollars) bears to the amount of said sale.

D. C. JACKSON,
United States Marshal.
CARY & PRATT,
Solicitor for Complainants.

Milwaukee, Feburary 1, 1862.

Postponement.

The above sale is adjourned, by order of the court, until Monday, the 28th day of July, 1862, at the same time and place as above.

D. C. JACKSON,
United States Marshal for Wisconsin.
CARY & PRATT,
Solicitors for Claimants.

Milwaukee, May 12, 1862.

The above sale is adjourned until Thursday, the 2d day of October, 1862, at the same time and place as above.

D. C. JACKSON,
United States Marshal for Wisconsin.
CARY & PRATT,
Solicitors for Complainants.

Milwaukee, July 28, 1862.

853 And objections being made to the sale, it is ordered by the court that exceptions to the report be filed by Friday morning next, and served on complainant's counsel, and that the exceptions be heard on Monday next, at ten o'clock, in the forenoon of said day.

854 *Motion and exceptions to marshal.—Report sale, Mill. and Minn. R. R.*

And afterwards, on the 10th day of October, 1862, came the defendants, the Milwaukee and Minnesota Railroad Company, and Lawrence G. Graham, and Donald D. Scott, by Mr. Carpenter, their solicitor, and filed their motion and exceptions to the marshal's report of sale as follows, viz :

In circuit court of the United States for the district of Wisconsin, in the eighth circuit.

GREENE C. BRONSON, JAMES T. SOUTTER and SHEPHERD KNAPP, compl'ts,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, def'ts.
} In equity.

The Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, by Matt. H. Carpenter, their solicitor, come into court here, after the filing of the marshal's certificate of sale, under the decree of the above-entitled cause, and moves the court here to refuse confirmation of said sale, and to set aside said

sale, and open the bidding therein, for the following reasons, among others, viz :

First. That the said certificate is untrue in fact, in this, to wit, that it returns that the said railroad and other things, except said lands ordered by said decree to be sold, were sold at and for the sum of $2,100,000 *dollars;* whereas, in truth and in fact, the same was sold by said marshal at said sale, at and for the sum of 1,700,000
855 dollars, and for no other or different sum ; and to support this exception, the defendants above, moving said court, refer to the annexed affidavit.

2. Because said property sold was not properly advertised by this court, and because said sale was not completed by the district court of the United States for said district.

3. To refuse confirmation, because the present is not a term of the circuit court, the same not having been called or ordered by the presiding judge of said court as required by law.

4. Because the said lands sold at 10 cents per acre were thereby sacrificed to the great injury of all other creditors than the complainants.

5. Because on account of the injunctional order before said sale, served as stated in the annexed affidavit and proclaimed at said sale, bidders were deterred from bidding, whereby said property was sacrificed to the injury of said defendants moving the court herein.

6. And because said sale is in many other respects and particulars apparent of record, and by the said marshal's certificate of sale in said cause, informal, irregular, and illegal.

MATT. H. CARPENTER,
Sol., and of counsel for the Defendants above moving.

856 Circuit court of the United States for the district of Wisconsin, in the 8th circuit.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees, complainants,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendants.
} In equity.

DISTRICT OF WISCONSIN, *ss :*

Moses Kneeland, being first duly sworn, on oath says, that he is the president of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause ; that he attended the sale of the marshal, under the decree in this cause, which was held at the post office in the city of Milwaukee, in said district, on the 2d day of October, A. D. 1862 ; and further says, that he was present from the time the marshal of said district arrived at the place of said sale until he left the same, after the sale was concluded; and he further says, that the lands by said decree ordered to be sold were, at said sale, struck off to F. P. James, at and for the sum of one hundred thousand dollars, that being the highest and best sum bidden therefor, and that the railroad and other things by said

decree ordered to be sold, except said lands, were, by said marshal, struck off to said James, as the highest bidder therefor, at and for the sum of seventeen hundred thousand dollars, ($1,700,000,) and
857 that said last-named sum was the highest and best sum bidden therefor at said sale, and that the return and certificate of said marshal, now filed in court, wherein he certifies that the same were sold to said James for 2,100,000 dollars is utterly untrue in fact, and that no such sum was bidden therefor by any person at said sale. This affiant further says, on information and belief, that said certificate of said marshal has been made in fraudulent collusion between said marshal and said James, or other persons in interest with said James.

This affiant further says, that before said sale the circuit court for the county of Dane, in the State of Wiscousin, issued a certain injunctional order, having, by the laws of said State, the force and effect of a writ of injunction in a certain action depending in said last-named court, wherein J. A. Helfenstein is plaintiff, and the La Crosse and Milwaukee Railroad Company, said Greene C. Bronson, James T. Soutter and Shepherd Knapp, plaintiffs in the above-entitled cause, and others, are defendants, of which said cause and the parties thereto said court had jurisdiction concerning the said railroad and other things so sold to said James for the sum of $1,700,000, enjoining and restraining the said complainants in the above entitled cause from proceeding to hold or have said sale, and to sell said property, until the further order of said last named court, and that said injunctional order was before said sale duly served on said complainants in the
858 above entitled cause, according to the practice of said court by service thereof on the said attorneys of said complainants in said cause in said last named court, and that notice thereof was published at said sale in the hearing of all bidders attending said sale.

That a copy of said injunctional order and the papers on which the same was founded are attached to or filed with the exceptions taken to said sale, on the part of said Helfenstein, and to that this affidavit refers. MOSES KNEELAND.

Subscribed and sworn to, before me, this 8th day of October, A. D. 1862. J. M. MILLER, *Clerk.*

And on the same day came the defendant, J. Albert Helfenstein, by his counsel, and filed his exceptions and the affidavit of Jedd. P. C. Cottrell, as follows, viz:

Cottrell's affidavit.

United States circuit court for the district of Wisconsin.

GREEN C. BRONSON, SHEPHERD KNAPP, and JAMES T. SOUTTER, trustees, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, and others. } In equity.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

Jedd. P. C. Cottrell, being duly sworn, says that he is one

859 of the plaintiff's attorneys in a certain suit now pending in the circuit court of Dane county, wherein said J. Albert Helfenstein is plaintiff, and the La Crosse and Milwaukee Railroad Company, said complainants and others, are defendants. That hereto annexed is a copy of the summons and complaint in said action, the same being marked exhibit "A." That due service of said summons and complaint has been made in said suit, upon said complainants, and that they have duly appeared and filed their answer therein. And that hereto annexed, marked exhibit "B," is a copy of a portion of their answer so served in said suit, the same constituting the defence secondly set up by them in said suit. And this deponent further says that on the 30th day of September, A. D. 1862, said plaintiff in said suit so pending in said circuit court of Dane county, procured from said court an order in said action so pending therein, of which the following is a copy, omitting the title of the cause, viz:

"On the records, papers, pleadings, and proceedings on file and of record in this cause, and on reading and filing the affidavit of Darius C. Jackson, hereto annexed, and the four exhibits referred to in and accompanying the same, copies of which exhibits are also hereto an-

860 nexed, it is now, on motion of Butler, Buttreck and Cottrill, and Palmer and Stark, attorneys for the plaintiff, J. Albert Helfenstein, ordered that the defendants, Green C. Bronson, Shepherd Knapp, James T. Soutter, trustees, and each and every of them, show cause before the Hon. H. S. Orton. judge of said court, at the office of Smith & Keyer, in the city of Madison, Wisconsin, on the 24th day of October, 1862, at 10 o'clock a. m. of that day, why the said Bronson, Soutter, and Knapp, and their agents, solicitors, attorneys, counsel and servants, and each and every of them, and all persons acting under or by the directions of said defendants, Bronson, Soutter and Knapp, or any or either of them, should not be strictly enjoined and restrained from selling or otherwise disposing of, and from offering or exposing for sale any of the property, franchises, rights, liberties, privileges, personal property or real estate of the defendant, the La Crosse and Milwaukee Railroad Company, or which lately belonged to it, which forms any part, parcel or portion of the property, real, personal or mixed, or any of the rights, privileges, liberties or franchises, described in and conveyed to the plaintiff by said La Crosse and Milwaukee Railroad Company by the deed of trust or mortgage set forth in substance in the complaint in this cause, and bearing date on the twenty-sixth day of September, eighteen hundred and fifty-seven, until the further order of this court herein; and the said

861 defendants, Bronson, Soutter and Knapp, and each and every of them, and each and every of their servants, agents, solicitors, counsel and attorneys, and each and every person acting under or by the direction of them, or either of them, are hereby particularly enjoined and restrained, until the hearing and decision of their motion, and the further order and decision of this court or the judge thereof herein, from selling and disposing of, or exposing for sale or suffering to be sold, any part or parcel, the property, real, personal or mixed, or of the rights, liberties, privileges, or franchises, specified and de-

scribed in the advertisement of sale, annexed and referred to in the said affidavit of Darius C. Jackson as "Exhibit B," except such portions thereof as are not included in said mortgage or deed of trust to said plaintiff, dated September 26th, A. D. 1857. This order is conditioned upon the plaintiffs giving and serving a written undertaking with securities who shall justify in double the amount thereof as hereinafter fixed, conditioned to the effect that the plaintiff will pay to said Green C. Bronson, Shepherd Knapp, and James T. Soutter, trustees, such damages, not exceeding the sum of ten hundred and fifty dollars, as they, said Bronson, Soutter, and Knapp, may sustain by reason of this injunction, if the court shall finally decide that the plaintiff was not entitled hereto; and let a copy of this order, and the annexed papers, be served on Messrs. Cary and Pratt, the attorneys for said Bron-
862 son, Soutter and Knapp, at least fifteen days before the time fixed for the hearing of this motion.

H. S. ORTON, *Judge, &c.*

Dated September 30, 1862.

And this deponent further says, that the papers referred to in said order to show cause, and annexed thereto, were an affidavit of Darius C. Jackson, stating in substance that he was the marshal of this district; that he had advertised the mortgaged premises in this action for sale, as such marshal, pursuant to the decree made in this cause, and that annexed to his said affidavit were copies of said decree, marked Exhibit A, and his advertisement of sale herein, marked Exhibit B. and that such copies were so annexed to said affidavit. And this deponent further says, that on the 2d day of October, A. D. 1862, before the hour of two o'clock p. m., at the city of Milwaukee in said district, he made service of said order, to show cause, and the affidavit of said Jackson and exhibits thereto annexed, and of the undertaking in said order mentioned, on John W. Cary and Wallace Pratt, composing the firm of Cary & Pratt, by showing them the originals and by delivering to and leaving with them copies thereof. And deponent further says, that on said 2d day of October, A. D. 1862, before the hour of two o'clock p. m., he also served said order to show cause, and accompanying papers, on said D. C.
863 Jackson, by delivering to and leaving with him copies thereof. And this deponent further says, that on said 2d day of October, A. D. 1862, at two o'clock in the afternoon, he attended at the post office in the city of Milwaukee, and was present at the sale made in this cause, and deponent was present during the whole time of said sale from the time the marshal came until he left; that said marshal read the advertisement of sale, and first exposed for sale the lands mentioned in said advertisement; that deponent then gave notice that said order to show cause had been made by said circuit court of Dane county, and had been served as aforesaid, and stated openly the substance thereof; and said marshal thereupon proceeded to sell said property; that he sold said lands first, and the sum of one hundred thousand dollars was bid therefor by F. P. James; and said lands were struck off at that sum, and on said marshal's inquiring

who was the bidder, he was told "F. P. James and others." That said marshal then proceeded to sell the balance of said property so advertised, and that the sum of seventeen hundred thousand dollars was the highest sum bidden therefor; that the same was struck off at that sum on the same being bid, and on the marshal's inquiring who was the bidder, he was told "F. P. James and others," and thereupon said marshal and the other persons present left said
864 post office. And deponent further says, that said two bids so made were "one hundred thousand dollars" and "seventeen hundred thousand dollars," and nothing was said as said sums being in bonds, and further says not.

J. P. C. COTTRILL.

Subscribed and sworn to, this 10th day of October, A. D. 1862, before me.

J. M. MILLER, *Clerk.*

865 *Exhibit A.*

Circuit court, Dane county.

J. ALBERT HELFENSTEIN, trustee, plaintiff,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, Greene C. Bronson, Shepherd Knapp, and James T. Soutter, trustees; Lawrence Graham, Donald D. Scott, Sebre Howard, Selah Chamberlain, Moses M. Davis, Newcomb Cleveland, James B. Cross, Mercantile Bank, Roger Rogers, William Bump, Sarah J. Harvey, Abram Vanderpool, Ephraim Kingsley, Lafayette Thayer, Clarance Vanderpool, Alfred Vanderpool, Andrew Dunn, Samuel B. Emory, James Wolstanholme, Ebenezer Higgins, George R. Mowry, Henry R. Eastman, Henry L. Simmons, Edwin C. Litchfield, Nathaniel S. Bouten, Stephen D. Goff, Azel E. Tallman, L. F. Billings, Elias K. Goodnow, Martha A. Dickinson, defendants.

THE STATE OF WISCONSIN,
To the above named defendants, and each of them:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and serve a copy of your answer on the subscribers, at the office of Palmer and Stark, in the city of Milwaukee, within ninety days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff will apply to the court for the relief demanded in the complaint.

Dated June 30th, 1860.

BUTLER, BUTTRICK & COTTRILL, and
PALMER & STARK, *Plaintiff's Attorneys.*

866 CIRCUIT COURT, Dane county.

J. ALBERT HELFENSTEIN, trustee,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, Greene C. Bronson, Shepherd Knapp, and James T. Soutter, trustees; Lawrence Graham, Donald D. Scott, Sebre Howard, Selah Chamberlain, Moses M. Davis, Newcomb Cleveland, James B. Cross, Mercantile Bank, Roger Rogers, William Bump, Sarah J. Harvey, Abram Vanderpoel, Ephraim Kingsley, Lafayette Thayer, Clarence Vanderpoel, Alfred Vanderpoel, Andrew Dunn, Samuel B. Emory, James Wolstanholme, Ebenezer Higgins, George R. Mowry, Henry R. Eastman, Henry L. Simmons, Edwin C. Litchfield, Nathaniel S. Bouten, Stephen D. Goff, Azel E. Tallman, L. F. Billings, Elias K. Goodnow, Martha A. Dickinson.

The complaint of the plaintiff shows to this court—

1. That by an act of the legislature of the State of Wisconsin, duly passed, entitled "An act to incorporate the La Crosse and Milwaukee Railroad Company," approved April 2, 1852, the said defendant, the La Crosse and Milwaukee Railroad Company, was duly incorporated and became and was a body politic and corporate by that name and style, and invested with all such powers, rights, privileges, franchise, and immunities as are mentioned in and granted and conferred by the said act, and by the act aforesaid, the said defendant, the La Crosse and Milwaukee Railroad Company, was, among other things, authorized and empowered to locate and construct a railroad, with one or more railways, from such point in the village of La Crosse to such point in the city of Milwaukee as should be determined upon by the board of directors, or from some point in the village of La Crosse aforesaid to some point where the same should intersect and connect with some other road running to the said city of Milwaukee and, generally to use, operate, maintain, and enjoy the same, as by the said act will, reference being thereto had, more fully and at large appear, and to which the said plaintiff prays leave to refer, and that the same may be taken as a part of this complaint as fully as if the same was herein recited and set forth at length.

2. That, by an act of the legislature of the State of Wisconsin, entitled "An act to amend an act to incorporate the La Crosse and Milwaukee Railroad Company," approved March 9, 1854, and by an act of the said legislature, entitled "An act to amend an act entitled 'An act to incorporate the La Crosse and Milwaukee Railroad Company,'" approved March 28, 1856, and by a further act of the said legislature, entitled "An act further to authorize the La Crosse and Milwaukee Railroad Company to issue and sell bonds and provide a sinking fund for the payment thereof," approved March 14, 1856, and by several other acts of the said legislature relating to the said company, and by general acts concerning and relating to railroad

companies in said State of Wisconsin, all passed subsequent to the act incorporating the said La Crosse and Milwaukee Railroad Company, and prior to the making of the several bonds, contracts, and trust deeds hereinafter mentioned, the additional powers, rights, privileges, franchise, and immunities, in the said several acts mentioned, were granted to and conferred upon the said defendant, the La Crosse and Milwaukee Railroad Company, as by the said several acts will, reference being thereunto had, more fully and at large appear, and to which the said plaintiff hereby refers and makes the same a part of this complaint.

867 3. That by an act of the Congress of the United States entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3, 1856, certain public lands of the United States in said act designated were granted to the State of Wisconsin to aid in the construction of certain lines of railroad in the State of Wisconsin, in said act last mentioned described, upon the terms and conditions in the said act contained, and to be disposed of by the State of Wisconsin as therein direct, as by the said act of Congress will, reference being thereunto had, more fully and at large appear, and to which the said plaintiff refers as a part of this complaint.

4. That, by an act of the legislature of the State of Wisconsin, duly passed and approved October 11, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1856," the said La Crosse and Milwaukee Railroad Company were authorized and empowered, amongst other things, and in addition to the powers, rights, privileges, franchises, and immunities which it then possessed and enjoyed, to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads, with one or more tracts or lines, from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and it was in and by the said act declared that the said defendant, the La Crosse and Milwaukee Railroad Company, should have, possess, exercise, and enjoy the same rights, privileges, functions, franchises, authority, and immunities with reference to the said last mentioned routes, or any railroad to be built thereon, as it then possessed or enjoyed with reference to any route it was then authorized to occupy, or any railroad then built or to be thereafter built thereon, and by the act last aforesaid was conferred upon the said La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company and in the several acts amendatory thereof, for the purpose of carrying out the object of the said last-mentioned act, and of appropriating and applying the lands in said act granted, or their proceeds, to aid in the construction of the

railroad by the said act authorized to be built, and by the said last-mentioned act the additional powers, privileges, franchises, functions, authority, and immunities, in the said act mentioned, were granted to and conferred upon the said La Crosse and Milwaukee Railroad Company, as by the said last-mentioned act, reference being thereunto had, will more fully and at large appear, and to which the said plaintiff refers, as a part of this complaint; and the said plaintiff is informed and believes that the said last-mentioned act was accepted and agreed to by the said defendant, the La Crosse and Milwaukee Railroad Company, within five days after the passage thereof, to wit, on the 11th day of October, 1856, by a resolution adopted by the board of directors of said company, and that a copy of said resolution, duly certified by the secretary of said company, under its corporate seal, was, on the day and year last aforesaid, and within five days after the passage of said last-mentioned act, filed in the office of the secretary of state of said State of Wisconsin.

5. That the said defendant, the La Crosse and Milwaukee Railroad Company, was, by the said act incorporating the same, and the several acts amendatory thereof and relating to the said company, in addition to the other powers conferred upon and enjoyed by said company, authorized and fully empowered, in its corporate capacity, to borrow any sums of money from any person or persons, corporation or body politic of any kind, and to make, execute, and deliver all necessary writings, notes, bonds, mortgages, or other papers and securities, in amount and kind as might be deemed expedient by the said corporation, in consideration of any such loan, or in discharge of any liabilities, that it might incur in the construction, repair, equipment, or running of said road.

6. That soon after the passage of said act, by which the said La Crosse and Milwaukee Railroad Company was incorporated, the said company was duly organized pursuant thereto, and commenced the construction of the railroad therein mentioned, between Milwaukee and La Crosse, and continued said work until and after the making of the trust-deeds hereinafter mentioned, and until it had constructed and put in operation a line of railroad extending from the city of Milwaukee to La Crosse, a distance of about two hundred miles; and the said plaintiff is informed and believes that at the time of the making and delivering of the trust-deed hereinafter mentioned, by the said company to the said plaintiff, and the issuing and disposal of the bonds now outstanding, mentioned in and secured by the said trust-deed, the said defendant, the La Crosse and Milwaukee Railroad Company, had acquired the title to a large portion of the right of way along the line of its road from the city of Madison to Portage City, a portion of which was located in the county of Dane, and had commenced the construction of its line of road from Madison, aforesaid, to Portage City, and had performed work thereon, and had expended in such construction, in the purchase of land for the right of way, and for engineering, and in grading its road in the said county of Dane, a large sum of money, amounting to one hundred and fifty thousand dollars, as the said plaintiff is informed and believes.

7. The said plaintiff is informed and believes, and upon his information and belief shows to the court, that at the time of the making and delivering of the said deed of trust by the said company to the said plaintiff, hereinafter set forth, the said company had located its line of road all, or nearly all, the way from Madison to Portage City, and from Portage City to La Crosse, and had acquired along its line of road the title to the lands occupied by, and on which the road-bed was located, and also for depot grounds, for a large portion of
867 its line, between Portage City and La Crosse, and had constructed and put in operation a portion of its railroad, extending westward from Portage City to Kilbourn City, a distance of about seventeen miles from Portage City, and had nearly completed its said road from thence to Mauston, a point about thirty-six miles westward from Portage City, and had performed work in and about the construction of its said line of road between Mauston and La Crosse aforesaid, to the amount of five hundred thousand dollars and upwards, as the plaintiff is informed and believes.

8. That the said defendant, the La Crosse and Milwaukee Railroad Company, heretofore, to wit, on the twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, at the city of Milwaukee in the State of Wisconsin, in pursuance of the power and authority in it vested by the laws of said State of Wisconsin, did make and execute, in due form of law, its certain deed and trust of that date, in the nature of a mortgage, between the said defendant, the La Crosse Railroad Company, as party of the first part, and the plaintiff as party of the second part, which deed was duly sealed with the corporate seal of the said company, and was subscribed by the president and secretary of the said company, and was also subscribed and sealed by the said plaintiff, and delivered the said deed of trust to the said plaintiff, by which said deed of trust the said defendant, the La Crosse and Milwaukee Railroad Company, recited and declared that the said company, in pursuance of their corporate powers, were then engaged in constructing a railroad from Madison, by the way of Portage City, to the city of Prescott, at the mouth of the St. Croix river or lake, and to the city of La Crosse, on the Mississippi river, and for the purpose of constructing the said roads and purchasing supplies, materials, and machinery therefor, and putting the same in operation, the said defendant, the La Crosse and Milwaukee Railroad Company, had determined to borrow a sum of money, not exceeding one million of dollars, and to issue its bonds for the repayment of the money which might be borrowed, with the interest thereon; five hundred of which bonds (exclusive of the numbering and interest warrants, or coupons) would be substantially in the following form, viz:

UNITED STATES OF AMERICA,
State of Wisconsin.

The La Crosse and Milwaukee Railroad Company.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company acknowledge themselves to be indebted to the

bearer hereof in the sum of one thousand dollars, lawful money of the United States, for money borrowed for the construction of their road from Madison to the city of Prescott, on the St. Croix river or lake, and from Portage City to the city of La Crosse, which sum they agree to pay to the bearer hereof, on the first day of October, in the year of our Lord 1860, at the Bank of the Republic, in the city of New York, with interest at the rate of eight per cent. per annum, payable in the city of New York semi-annually, on the first day of April and the first day of October in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. This is one of five hundred bonds, all of the same tenor, and numbered from one to five hundred, respectively, which, with two thousand bonds for the sum of one hundred dollars each, numbered from one to two thousand, respectively, and six hundred bonds for the sum of five hundred dollars each, numbered from one to six hundred, respectively, make in the aggregate the sum of one million of dollars; to secure the payment of all which bonds a deed of trust has been executed by the said railroad company to J. Alfred Helfenstein, conveying all such interest as the said railroad company has acquired, or may hereafter acquire, in said road from Madison to Prescott, and in the road from Portage City to La Crosse, with all the equipments and other things pertaining to the said road, reference to which trust deed, bearing date the 26th day of September, 1857, is hereby had for a more full description of the said lands, road, and other property, and the interest thereby conveyed to said trustee.

In witness whereof, the said railroad company has caused these presents to be signed by its president and secretary, and its corporate seal to be hereto affixed, the first day of October, in the year of our Lord 1857.

....., *President.*

....., *Secretary.*

Registered and countersigned by the trustee this ..... day of ....., 185 .

....., *Trustee.*

And recited and declared that two thousand of which said bonds would be in like form, but for the sum of one hundred dollars each, and six hundred of which bonds would be in the like form, but for the sum of five hundred dollars each; and further recited and declared that the said defendant, the La Crosse & Milwaukee Raidroad Company, had determined to secure the payment of such bonds as might be issued as aforesaid in the manner therein provided, and wherein and whereby the said defendant, the La Crosse & Milwaukee Railroad Company, in consideration of the premises, and of the sum of one dollar paid by the said plaintiff, granted, bargained, sold, conveyed, and confirmed unto the said plaintiff all and singular the several tracts, pieces, or parcels of land which then were or might thereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depot, and other buildings, and all the other lands and real estate which then constituted or might thereafter constitute or be a part of the road of the said defendant, the La

Crosse & Milwaukee Railroad Company, from Madison, by way of Portage City, to the city of Prescott, and from Portage City
869 to the city of La Crosse, and also all and singular the superstruction of the said roads, whether then made or to be made thereafter, and all the engine-houses, workshops, depot, and other buildings, and all the other improvements on or pertaining to the said roads, whether then built and made or to be built and made thereafter; and also all and singular the locomotives, engines, and other rolling stock, and all the other equipments of every kind and description which had already been or might thereafter be procured for or used on said roads, or either of them; and all the materials, tools, implements, utensils, and other personal property, which had been or might thereafter be procured in connection with said roads or either of them, and also all and singular the rights, liberties, privileges, and franchises of the said defendant, the La Crosse and Milwaukee Railroad Company, of every kind and description, relating to said roads; also all those certain pieces or parcels of land situate, lying, and being in the county of Pierce, and State of Wisconsin, and described as follows, to wit: The undivided half of the northeast quarter and the east half of the southwest quarter of section No. two. (2,) township No. twenty-six (26) north, of range No. twenty (20) west, containing one hundred and ninety-two acres, (192 acres;) also the undivided half of one hundred and ninety-two (192) acres of land in section two (2) and three, (3,) in the town and range last aforesaid, and particularly described in a deed thereof, from George W. McMurphy and wife to the said company, dated the twenty-ninth (29th) day of August, A. D. 1857; also the undivided half of the southwest quarter of section three, (3,) in township number twenty-six (26) north, of range twenty (20) west, containing one hundred and fifty-four acres, (154,) being the same land conveyed to the said company by James R. Rice and wife, by deed bearing date the twenty-eighth (28th) day of August, A. D. 1857; also the undivided half of one hundred and four 60-100 acres (104 60-100 acres) in section two (2) and three (3) of the town and range last aforesaid, and being the same lands conveyed to the said company by Ephraim Hamsberger, by deed dated the twenty-seventh day of August, A. D. 1857; also ninety acres (90) of land in section eleven (11) and twelve, (12,) in the town and range last aforesaid, being the same land conveyed to the said company by Lewis M. Hamsberger, by deed dated the twenty-eighth (28th) day of August, A. D. 1857, and to which deed reference is made for a more particular description thereof; also the undivided half of seventy-five (75) acres of land in section twenty-four, (24,) in the town and range aforesaid, and being the same land conveyed to the said company by Pembroke V. Wise and wife, by deed dated the twenty-eighth day of August, A. D. 1857, and to which deed reference is made for a more particular description thereof; also the undivided half of three hundred and twenty (320) acres in section No. one, (1,) in township twenty-six (26) north, of range twenty (20) west, conveyed to the said company by O. T. Maxon; also the undivided half of one hundred and sixty (160) acres in section No. two, (2,) in the same town

and range, conveyed to the said party of the first part by S. W. Wright; also the undivided half of three hundred acres (300) in section number two (2) and three, (3,) in the *the* same town and range, conveyed to the said company by William J. Copp; also the undivided half of twenty-four (24) acres in said section No. two (2) and three, (3,) in the same town and range, conveyed to the said company by John C. McMurphy; also the undivided half of one hundred acres (100) in section (10,) in the same town and range, conveyed to the said company by Hilton Doe; also the undivided half of one hundred and sixteen acres (116) in section ten, (10,) and the undivided half of fifteen (15) acres in section fifteen, (15,) in same town and range, conveyed to said company by George Shazer; also the undivided half of twenty (20) acres in section ten, (10,) in the same town and range, conveyed to the said company by William Howes and Ferdinand Beach; also the undivided half of eighty (80) acres in section eleven, (11,) in the same town and range, conveyed to the said company by Elizabeth, Sarah, Jane, and Susan Johnson; also the undivided half of ninety-three (93) acres in section, town, and range last aforesaid, conveyed to the said company by Isaac J. Foster; also the undivided half of ninety-five (95) acres in the section, town, and range last aforesaid, conveyed to the said company by Chester Fox; also the undivided half of eighty (80) acres in section eleven (11) and twelve, (12,) in the same town and range, conveyed to the said company by S. O. McKeen; also the undivided half of seventy (70) acres in section No. fourteen, (14,) in the same town and range, conveyed to the said company by Allen H. Weld; and also all the right, title, and interest of the said defendant, the La Crosse and Milwaukee Railroad Company, legal or equitable, and then present or prospective of, in, and to, all the lands in the said mortgage and deed of trust, and hereinbefore described, and of, in and to any other land in the county of Pierce aforesaid; to have and to hold all and singular the property, real, and personal, with the heriditaments and appurtenances, and all and singular the rights, liberties, privileges and franchises thereby conveyed, or intended to be conveyed, to the said plaintiff and his successors, and successor, and his heirs and assigns forever, in trust nevertheless, and upon the trusts, terms, and conditions therein expressed.

And it was in and by the said mortgage or trust deed declared and provided that, until default should be made in the payment of said bonds, or some of them, or the interest thereon, the said defendant, the La Crosse and Milwaukee Railroad Company, should be suffered and permitted to possess, hold, and enjoy the said roads therein and hereinbefore described, with the equipments and all other things appertaining to said roads, and use the same, and take and receive the income and profits thereof, in the same manner as though the said deed had not been executed.

870 And it was in and by the said mortgage or trust deed further provided and declared, that in case default for the space of sixty days should be made in the payment of any of said interest, warrants or coupons, as they respectively should fall due, it should thereupon be lawful, and the said plaintiff was thereby authorized

and empowered in his discretion, to sell at public or private sale, for the best price which could be obtained for the same, all or any portion of the lands therein and hereinbefore described, for the purpose of obtaining the necessary funds to satisfy such default, and might appoint one or more agents or attorneys to make such sales, execute conveyances to the purchasers, and receive the purchase money; and that if the sum in default should at any time be equal to the amount of the interest for one year on all the bonds then outstanding, and the same could not be satisfied within a reasonable time by such sales of lands, or if default be made in the payment of the principal sum of said bonds at maturity, the said plaintiff might thereupon in his discretion, either in person or by his attorney or attorneys, agent or agents, appointed for that purpose, enter into and upon, and take possession of all and singular said railroad, in the said mortgage or deed of trust described, or any part or division thereof, and all the other property, real and personal, in and by the said mortgage or deed of trust conveyed, or intended to be conveyed, and might operate said road, and take and receive the income and profits thereof, and might sell all and singular the said roads, and all the other property, real and personal, thereby conveyed or intended to be conveyed, either at public or private sale, and execute and deliver to the purchaser or purchasers deeds and conveyances which should vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of the said plaintiff and the said defendant the La Crosse and Milwaukee Railroad Company, of, in, or to said property, and every part and parcel thereof, including the rights, liberties, privileges, and franchises of said defendant, the La Crosse and Milwaukee Railroad Company, in respect to the road, which might be sold as aforesaid; but that, before any sale of said lands, or road, or either of them, or any part thereof, or of the rights, liberties, and franchises aforesaid, should be made at auction, notice of such intended sale should be published once in each week, for twelve weeks at least, in two newspapers published in the city of New York, and three newspapers, at least, published in the State of Wisconsin, one of which should be published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same should be given.

And it was in and by the said deed of trust further provided, that the said defendant, the La Crosse and Milwaukee Railroad Company, would cause the said deed of trust to be duly recorded in all proper places, and would satisfy and discharge all taxes, charges, liens, and other burdens which either existed or might thereafter be imposed or arise on the whole or any part of the property thereby conveyed, or intended to be conveyed, and that the said plaintiff assumed no duty or responsibility on those subjects, or in relation to any other matter, except as was therein provided; and it was in and by the said deed of trust further provided, that the said plaintiff might appoint all such attorneys, counsellors, clerks, and other agents as he might deem proper in the execution of the said trust, and should not be answerable for the defaults or other misconduct of

such attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their selection; and further, that the said plaintiff should not be answerable or responsible for anything short of gross negligence or wilful default in the discharge of his duties.

And it was in and by the said deed of trust further provided and declared that the trust thereby created extended to such bonds, and such only, as should be registered and countersigned by the said plaintiff, the trustee therein named, and that, when all of the said bonds should be satisfied and discharged the trust should cease. That the said trust should also cease at the end of six calendar months after the principal moneys should fall due, as to all such bonds as should not then have been presented for payment, and whenever the trust should determine, and any moneys which might be due to the said plaintiff should be paid, the said plaintiff would reconvey to the said La Crosse and Milwaukee Railroad Company all his right, title, and interest of, in, and to all of said trust property, which might not have been previously disposed of in pursuance of the said trust.

And it was in and by the said deed of trust further provided and declared that the supreme court of the State of Wisconsin might remove the said plaintiff, on the application of said railroad company, reasonable notice being first given to the said plaintiff, and that any trustee might resign his trust and thenceforward be discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company, should be approved by the said supreme court; and if at any time the trustee therein named, (the said plaintiff) should be removed, or resign the said trust, the said supreme court, on reasonable notice to the said president or secretary of the said La Crosse and Milwaukee Railroad Company, might appoint a new trustee, who should thereupon acquire and have all rights, titles, interests, and authority under the trust, and subject to all duties and responsibilities in relation to the same, as fully as though he had been originally named as a trustee, and executed the said deed of trust.

And it was in and by the said deed of trust further provided and declared, that the said La Crosse and Milwaukee Railroad Company would, from time to time, pay all such costs, charges, and expenses as the said trustee might sustain, or be put to, in the execution of the said trust, and keep him fully indemnified in the premises.

871 And it was further provided and declared in the said trust deed, that the said trustee therein named, the said plaintiff, thereby accepted and covenanted and agreed to and with the said defendant, the La Crosse and Milwaukee Railroad Company, faithfully to execute the said trust, and the said railroad company thereby covenanted and agreed to and with the plaintiff, the said trustee, his successors and successor, that the said railroad company would from time to time, during the continuance of the said trust, make, execute, cause to be duly recorded and delivered to said trustee (the said plaintiff,) or to the person or persons who should then be trustees, all such further conveyances and assurances, and would do all such further acts, as might be either necessary or proper, for more effectually

vesting in said trustee all such rights, title, interest, and estate, both legal and equitable, as the said railroad company then had or might thereafter acquire of, in, and to all and every part of the property thereby conveyed, or intended to be conveyed; which said deed of trust was afterwards, to wit, on the said 26th day of September, A. D. 1857, duly acknowledged by the said defendant, the La Crosse and Milwaukee Railroad Company, and afterwards, to wit, on the 28th day of September, A. D. 1857, was duly recorded in the office of the secretary of state of the said State of Wisconsin, in the book of Railroad Mortgages, on pages, 254, 255, 256, 257, 258, and 259, at 5 o'clock p. m. of said last-mentioned day; and afterwards, to wit, on the first day of October, A. D. 1857, was also duly recorded in the office of the register of deeds of the county of Pierce, in book "D," of deeds, pages 86, 87, 88, 89, 90, 91, and 92, at 8 o'clock p. m. of the day last aforesaid, as by the said deed of trust, ready to be produced as this court shall direct, or the record thereof will, reference being thereunto had, more fully and at large appear.

9. That afterwards, and on or about the first day of October, in the year one thousand eight hundred and fifty-seven, the said defendant, the La Crosse and Milwaukee Railroad Company, made its several negotiable bonds of that date, in the form mentioned in the said trust deed, four hundred and two of which said bonds were numbered from No. 1 to No. 402, both inclusive, and were for the payment of one thousand dollars each, the principal sum therein mentioned to the bearer of the said bonds on the first day of October, in the year one thousand eight hundred and sixty, with interest thereon at the rate of eight per cent. per annum, payable in the city of New York semi-annually, on the first days of April and October in each year, on the presentation and delivery of the interest warrants or coupons thereto annexed, and were sealed with the corporate seal of the said La Crosse and Milwaukee Railroad Company, and the said company caused the name of its president and secretary to be subscribed to the said several bonds, and were registered and countersigned by the said plaintiff on or about the said first day of October, A. D. 1857, and were by him delivered to the said company; and four hundred and one of said bonds were numbered from No. 1 to No. 401, both inclusive, and were for the payment of five hundred dollars each, that being the principal sum therein mentioned, to the bearer of said bonds, on the first day of October, in the year one thousand eight hundred and sixty, with interest thereon at the rate of eight per cent. per annum, payable in the city of New York semi-annually, on the first days of April and October in each year, on the presentation and delivery of the interest warrants or coupons thereto annexed, and were severally sealed with the corporate seal of the said La Crosse and Milwaukee Railroad Company, and the said company caused the said last-mentioned bonds to be severally subscribed by its president and secretary, which said last-mentioned bonds were registered and countersigned by the said plaintiff on or about the first day of October, in the year one thousand eight hundred and fifty-seven, and delivered by him to the said La Crosse and Milwaukee Railroad Company; and one hundred of said bonds were numbered

from No. 1 to No. 100, both inclusive, and were for the payment of one hundred dollars each, that being the principal sum therein mentioned, to the bearer of the said last-mentioned bonds, on the said first day of October, in the year one thousand eight hundred and sixty, with interest thereon at the rate of eight per cent. per annum, payable in the city of New York semi-annually, on the first days of April and October in each year, on the presentation and delivery of the interest warrants or coupons thereto annexed, and were severally sealed with the seal of the said La Crosse and Milwaukee Railroad Company, and the said company caused the said bonds last mentioned to be severally subscribed by its president and secretary, which said last-mentioned bonds were registered and countersigned by the said plaintiff, on or about the said first day of October, A. D. 1857, and delivered by him to the said La Crosse and Milwaukee Railroad Company, and that interest warrants or coupons, for the payment of the said interest mentioned in the said several bonds hereinbefore described, at the times above mentioned, were annexed to the said several bonds respectively.

10. That the bonds so made and executed by the said company, as aforesaid, and registered and countersigned by said plaintiff, and by him delivered to the said company, as hereinbefore mentioned, amounted in the aggregate to the sum of seven hundred and two thousand dollars, and no more, and that the remainder of the bonds, mentioned in and provided for by the said deed of trust were never registered or countersigned by the said plaintiff, and, as he is informed and believes, were never made or executed by the said La Crosse and Milwaukee Railroad Company.

11. The said plaintiff is informed and believes, and upon such information and belief shows to the court, that afterwards, and soon after the said several bonds above described were registered and countersigned by him, and delivered to the said La Crosse and Milwaukee Railroad Company as hereinbefore mentioned, and during the
872 months of October, November, and December, in the year one thousand eight hundred and fifty-seven, or about that time, the said company sold, issued, and delivered a part of said bonds to a large number of individuals, partnerships, firms, and corporations, for a valuable consideration, who thereupon and thereby became the bearers and the *bona fide* holders of the said bonds, and entitled to the moneys therein mentioned and thereby secured and agreed to be paid; and that the bonds so made, countersigned, and registered, and so sold, disposed of, issued, and delivered, and now outstanding and unpaid, amount in the aggregate to the sum of three hundred and fifty-three thousand dollars, exclusive of the interest accrued thereon, and no more, and have come by transfer into the hands of a large number of persons, some of whom are unknown to the plaintiff, and who are too numerous to be made parties; and that all the remainder of the said bonds so made, registered, and countersigned as aforesaid, exceeding the said sum of three hundred and fifty-three thousand dollars, have been cancelled and destroyed by the said La Crosse & Milwaukee Railroad Company, and are not now outstanding, nor any

lien or charge upon the said trust in and by the said deed created, or upon the said land and property therein described.

12. That the plaintiff is informed and believes, that on the first day of April, in the year one thousand eight hundred and fifty-eight, the said defendant, the La Crosse and Milwaukee Railroad Company, made default in the payment of the half year's interest that then became due and payable on the bonds so issued, or upon nearly all of the bonds so issued, and then and still outstanding, and wholly neglected and refused, and still do neglect and refuse to pay the interest warrants or coupons which became due and payable on that day; that a small number of said bonds not exceeding as the plaintiff is informed and believes, fifty thousand dollars thereof, had been issued and disposed of by the company, with the first coupons cut off and cancelled; that on the first day of October, in the year one thousand eight hundred and fifty-eight, and again on the first day of April, in the year one thousand eight hundred and fifty-nine, and again on the first day of October, A. D. 1859, and again on the first day of April, A. D. 1860, as the said plaintiff is informed and believes, the said La Crosse and Milwaukee Railroad Company failed and made default in the payment of the interest warrants or coupons annexed to the said several bonds, which became due and payable on those days respectively, and that the whole amount of interest moneys which became due and payable on the said bonds, on the several times and days above mentioned, still remains due and unpaid to the holders of the said several bonds; that, as the plaintiff is informed and believes, the amount due and in arrear for interest on the said bonds on the first day of April, A. D. 1860, and still due, and in arrear and unpaid, exceeds the sum of sixty-five thousand dollars; that said sum has remained due and unpaid and in arrear for more than sixty days last past; that the interest on all of the said bonds now outstanding amounts to the sum of twenty-eight thousand two hundred and forty dollars for one year, and that the sum of interest on the said bonds now in default and due, and unpaid, and which has been and remained in default and due and unpaid for more than sixty days last past, is more than equal to, and greatly exceeds the amount of the interest for one year on all of the said bonds now outstanding, and that such interest cannot be satisfied in a reasonable time, nor at all, out of said lands, situated in the said county of Pierce, in the said deed of trust described; that many of said lands are subject to encumbrances, which greatly depreciate their value, and the whole value of said lands, as the plaintiff is informed, does not exceed the sum of ten thousand dollars, and that the interest now in default and remaining due and unpaid upon the said bonds, and which has so remained due and unpaid more than sixty days, exceeds the entire value of said lands by more than fifty thousand dollars, as the said plaintiff is informed and believes.

13. And the said plaintiff further shows, that he is informed and believes that the said defendant, the La Crosse and Milwaukee Railroad Company, on or about the 31st day of December, in the year one thousand eight hundred and fifty-six, made its certain trust deed

of that date between the said company of the one part, and the said defendants Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, a sparties of the second part; which deed was sealed with the corporate seal of the said company, and was subscribed by the president and secretary of the said company, and was also subscribed by the said defendants Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and was delivered to them; by which said deed the said company, after reciting the said act of Congress of the 3d of June, 1856, and the said act of the legislature of the State of Wisconsin of the 11th day of October, 1856, recited that the said railroad company, for the purpose of constructing its road, from Madison, by way of Portage City and St. Croix river or lake, had determined to borrow a sum of money, not exceeding ten millions of dollars, and to issue its bonds for the repayment thereof, the form of which bonds was set forth in said deed, did, for the purpose of securing the payment of the said bonds and the coupons or interest warrants thereto annexed, and upon the trusts in the said deed contained, grant, bargain, sell, and convey unto the said defendants Greene C. Bronson, James T. Soutter, and Shepherd Knapp, the several tracts, pieces, and parcels of land, property, real and personal, and franchises, rights, privileges and immunities, railroads, and equipments, in the said deed more particularly described, in trust and upon the conditions in the said deed expressed, as by the said deed or the record thereof will, when produced and proved as this court shall direct, more fully and at large appear; a new copy of which said last-mentioned deed of trust is hereto annexed, and marked Schedule A, and which copy the plaintiff prays may be taken and received as a part of this complaint, as fully and completely as if the said deed of trust was herein recited and set forth at length; that the said deed of trust was acknowledged by the parties there-
873 to, and was recorded in the office of the secretary of state of the State of Wisconsin, on or about the 13th day of January, in the year of our Lord one thousand eight hundred and fifty-seven, in the book of Railroad Mortgages.

14. That the said plaintiff is informed and believes that afterwards, and on or about the first day of February, in the year one thousand eight hundred and fifty-seven, the said La Crosse and Milwaukee Railroad Company made its several negotiable bonds of that date in the form mentioned in the said last-mentioned deed of trust, each of which bonds was for the payment of the principal sum of money therein mentioned to the bearer of said bond, on the first day of February, in the year of our Lord one thousand eight hundred and seventy-seven, with interest at the rate of seven per cent. per annum, payable in the city of New York on the first day of February and the first day of August in each year, on the presentation and delivery of the interest warrants or coupons, for the payment of said interest money at the times above mentioned; each of which bonds was for the payment of one thousand dollars.

That between the time of the making of the said last-mentioned trust deed and the first day of October, A. D. 1857, twenty-five hun-

dred of the said bonds, amounting in the aggregate to the two millions five hundred thousand dollars, and no more, were registered and countersigned by the said defendants Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees.

15. The plaintiff further shows, that he is informed and believes that of the said last-mentioned bonds so made, registered, and countersigned as aforesaid, afterwards, and prior to the making of the said trust deed by the said defendant, the La Crosse and Milwaukee Railroad Company, to the said plaintiff, and hereinbefore set forth, nineteen hundred and ninety-one of the said bonds, and no more, amounting in the aggregate nominally to one million nine hundred and ninety-one thousand dollars, were issued, sold, and disposed of by the said La Crosse and Milwaukee Railroad Company, and that no more of said bonds were issued, sold, or disposed of by the said La Crosse and Milwaukee Railroad Company until long after the said deed of trust herein first set forth was executed and delivered by the said La Crosse and Milwaukee Railroad Company to the said plaintiff, as hereinbefore mentioned, and after the bonds therein described, and thereby secured, and now outstanding, were made, registered, countersigned, issued, sold, and delivered, as hereinbefore set forth.

16. The plaintiff further shows to the court that he is informed and believes that at the time of the making and delivery by the said La Crosse and Milwaukee Railroad Company of the said deed of trust to the said defendants Greene C. Bronson, James T. Soutter, and Shepherd Knapp, the said La Crosse and Milwaukee Railroad Company had not located its line of road therein described, from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse, nor any part thereof, and the said company had not then acquired the title or become the owner of any of the several tracts of land which thereafter became and constituted the site of the roadway turnouts, engine-houses, workshops, depots, and other buildings, nor any other lands or real estate, which thereafter and now constitute or are a part of the railroad of the said company, on or along the line and between the points aforesaid; and that the said company had not then constructed any part of the said roads, nor any engine-houses, workshops, depots, or other buildings or improvements on or pertaining to the said roads in the said last-mentioned trust deed described; and that at the time last aforesaid the said railroad company had not acquired, or procured, or provided, and did not own any locomotive engines or other rolling stock or equipments of any kind or description for or used on said roads, or either of them; nor had the said company then procured, nor did it then own any materials, tools, implements, utensils, or other personal property which had been procured in connexion with the said roads, or either of them, and that the said company had not then acquired, and did not then own any of the property, real or personal, in the said last-mentioned trust deed described, except what is therein described "as the rights, liberties, privileges, and franchises of the said railroad company;" and the said railroad company had not then constructed any part of

the said railroads in the said last-mentioned deed of trust described, nor commenced the construction thereof, nor of any part thereof, and that the said roads were not, nor was any part thereof, in existence, and that the said railroad company had not then acquired the right of way for such lines of road, nor any part thereof, and did not then own the land on which said roads were afterwards located, nor any part thereof, and the said plaintiff submits, and insists, that the said last-mentioned deed of trust, so executed by the said company to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as aforesaid, is not a valid lien and incumbrance upon the said lines of road, or any part thereof.

17. And the said plaintiff is informed and believes, and upon such information and belief shows to the court, that about seven hundred and seventy-five thousand dollars in amount of the said bonds, so made by the said company, and countersigned and registered by the said defendants Greene C. Bronson, James T. Soutter, and Shepherd Knapp, under and pursuant to the provisions of the said last-mentioned deed of trust, were issued and disposed of, by the said La Crosse and Milwaukee Railroad Company, before the lines of the railroad of the said La Crosse and Milwaukee Railroad Company from Madison, by way of Portage City, to St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse, or either of them, or any part thereof, embraced and described in the said last-mentioned deed of trust, were or was constructed, or in process of construction, and that in addition to the said amount of seven hundred and seventy-five thousand dollars of said bonds,
874 and prior to the making and delivery of the said deed of trust hereinbefore set forth by the said La Crosse and Milwaukee Railroad Company to the said plaintiff, and prior to the making, registering, countersigning, issue, sale, delivery, and disposal of the bonds issued thereunder, and now outstanding, as hereinbefore set forth, no more than twelve hundred and sixteen thousand dollars in amount of the said bonds, so made by the said company, and countersigned and registered by the said defendants Greene C. Bronson, James T. Soutter, and Shepherd Knapp as aforesaid, were issued, sold, and disposed of by the said company, under and pursuant to the said deed of trust, executed by the said company to the said defendants Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and that of the last-mentioned amount of twelve hundred and sixteen thousand dollars of the said last-mentioned bonds, many of them were negotiated and disposed of by the said company at and for a merely nominal consideration, and greatly below their par value.

18. The said plaintiff is informed and believes, and upon his information and belief shows to the court, that afterwards, and on or about the twenty-eighth day of January, in the year one thousand eight hundred and fifty-eight, the said La Crosse and Milwaukee Railroad Company made its certain other indenture or deed of that date, sealed with the corporate seal of the said company, and subscribed by its president and secretary, and delivered the said indenture to the said defendants Greene C. Bronson, James T. Soutter, Shepherd Knapp, which last-mentioned indenture was acknowledged by the

said company, and recorded in the office of the secretary of state of the State of Wisconsin, on the 11th day of February, A. D. 1858, in book of Railroad Mortgages, on pages 321 to 326, both inclusive, a true copy of which said last-mentioned indenture or deed is hereto annexed, and marked Schedule B, and made a part of this complaint, and to which, or the record thereof, the plaintiff refers for the contents of the said last-mentioned indenture.

19. That the plaintiff is informed and believes, and upon such information and belief, shows to the court, that prior to the making and delivery of the said last-mentioned indenture or deed, by the said La Crosse and Milwaukee Railroad Company, to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and on or about the seventeenth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, the said defendant, the La Crosse and Milwaukee Railroad Company, had an office and transacted business in the city of New York, in the county and State of New York, and that the said defendants Greene C. Bronson, James T. Soutter, and Shepherd Knapp were then and still are residents of the said city of New York, and that one Prentiss Dow, who then was, or theretofore had been, the financial or transfer agent of the said La Crosse and Milwaukee Railroad Company in the city of New York, aforesaid, then had in his possession or under his control a large number of the said bonds hereinbefore described, made and executed by the said company, and registered and countersigned by the said defendants Greene C. Bronson, James T. Soutter, and Shepherd Knapp, pursuant to the said deed of trust, a copy of which is hereto annexed, and marked Schedule A, which came to his hands as agent of the said company, and belonged to the said company, and which said last-mentioned bonds had not then been sold or delivered, or in any manner disposed of by the said company, and that all of said bonds then made and countersigned, exceeding the said sum of one million nine hundred and ninety-one thousand dollars thereof, issued and disposed of as aforesaid, to wit: five hundred and nine thousand dollars in amount of the said bonds, then belonged to the said company, and then were held by and were in the possession or under the control of the said company, its officers and agents, or some or one of them, and had not then been sold, delivered, or otherwise disposed of, or issued by the said company; and that on or about the day and year last aforesaid, to wit, the said seventeenth day of October, in the year one thousand eight hundred and fifty-eight, Francis Vose, Edward Livingston, and Charles L. Perkins, copartners, composing the firm of Vose, Livingston & Co., and who then resided and were engaged in business in the city and county of New York, in the said State of New York, instituted and commenced an action in the supreme court of New York, in the said city and county of New York, wherein the said Francis Vose, Edward Livingston, and Charles L. Perkins were plaintiffs, against the said La Crosse and Milwaukee Railroad Company, Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and the said Prentiss Dow, defendants, which said action was commenced by the due service of a summons and complaint therein on the said several defendants; that the summons

in said action was dated the 17th day of October, A. D. 1857, and was subscribed by Butler, Evarts, and Southmayd, as attorneys for the plaintiffs therein named, and was directed to the defendants therein named, to wit, the La Crosse and Milwaukee Railroad Company, Greene C. Bronson, James T. Soutter, Shepherd Knapp, and Prentiss Dow, and thereby the said defendants therein named were summoned and required to answer the complaint in said action, a copy of which was therewith served upon them, and to serve a copy of their answers upon the said Butler, Evarts and Southmayd, at their office, number two Hanover street, in the city of New York, within twenty days after the service of said summons and complaint, exclusive of the day of service; and if they, the said defendants in said summons and complaint named, failed to answer the said complaint within the time aforesaid, the said plaintiff in the said action would apply to the court for the relief demanded in the said complaint. That upon the service of a copy of the said summons and complaint upon the said La Crosse and Milwaukee Railroad Company, Greene C. Bronson, James T. Soutter, Shepherd Knapp, and Prentiss Dow, the defendants therein named, as aforesaid, the said supreme
875 court in the said city and county of New York, in the said State of New York, acquired and had, and might lawfully exercise, complete and ample jurisdiction of the parties to the said action so commenced and instituted, and of the subject-mattter thereof; that in and by the complaint in the said action, the said Francis Vose, Edward Livingston, and Charles L. Perkins, the plaintiff therein, amongst other things in the said complaint, in the said action contained, demanded judgment that the said La Crosse and Milwaukee Railroad Company, its officers and agents, and each and any of them, might be perpetually enjoined and restrained from selling, negotiating, pledging, using, or in any way disposing of or interfering with any of the bonds of the said La Crosse and Milwaukee Railroad Company, secured or purported to be secured by the said deed of trust, bearing date the 31st day of December, A. D. 1856, made by the said company to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, (a copy of which is hereto annexed, marked Schedule A,) and from demanding or obtaining from the said Prentiss Dow any of such bonds which were in his possession or under his control; that the said Prentiss Dow might be perpetually enjoined and restrained from delivering up or parting with, except under the order of the said court, and from in any way using or disposing of any of such bonds, which were in his hands or possession, or under his control, directly or indirectly, and which were held for account of the said La Crosse and Milwaukee Railroad Company, and particularly such bonds to the amount of four hundred and eighty-four thousand dollars in the said complaint before mentioned, and which last-mentioned bonds it was in said complaint alleged were then in the hands and possession or under the control of the said Prentiss Dow, as agent of the said company, undisposed of by said company, and were then held by the said Dow for account of the said company, and that a temporary injunction by order might be granted to the effect therein

demanded as aforesaid, and also that the said last-mentioned bonds, to the amount of four hundred and eighty-four thousand dollars, or thereabouts, might under the judgment of the said court be cancelled and destroyed, and that pending the said suit a receiver might be appointed, and that the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp might be injoined from countersigning any bonds purporting to be issued under or secured by the said deed of trust, last mentioned. And the said plaintiff, upon his information and belief, alleges that after the commencement of the said action, and the service of the summons and complaint therein, and on or about the said seventeenth day of October, A. D. 1857, the said court, or some duly authorized judge or officer thereof, did grant, sign, and issue an order of injunction therein, restraining and enjoining the said defendants as in the said complaint in said action demanded as aforesaid, which said order was, on or about the day last aforesaid, duly served upon the said La Crosse and Milwaukee Railroad Company, Greene C. Bronson, James T. Soutter, Shepherd Knapp, and Prentiss Dow, and that the said action remained pending in the said court, and the said injunctional order so made and served therein as aforesaid remained in full force and virtue, unreversed and not dissolved, vacated nor set aside until on or about the twenty-eighth day of January, in the year one thousand eight hundred and fifty-eight, during which time no more of the bonds of the said company secured by the said deed of trust, a copy whereof is hereto annexed and marked Schedule A, were issued, sold, or disposed of by the said company than the amount thereof which had been theretofore issued and disposed of as hereinbefore mentioned.

20. The said plaintiff, upon information and belief, alleges that afterwards, and on or about the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, the said La Crosse and Milwaukee Railroad Company, made and entered into an agreement in writing, between the said La Crosse and Milwaukee Railroad Company of the one part, and the said Francis Vose, Edward Livingston, and Charles L. Perkins, composing the said firm of Vose, Livingston & Co., of the other part, wherein and whereby it was stipulated and agreed by and between the said parties, amongst other things, that the said Vose, Livingston & Co. would discontinue their said action then pending in the supreme court of the State of New York against the said La Crosse and Milwaukee Railroad Company and the said Greene C. Bronson, James T. Soutter, Shepherd Knapp, and Prentiss Dow, hereinbefore mentioned, and dissolve the injunction therein, upon the terms and conditions in the said agreement in writing mentioned, a copy of which said agreement in writing is hereto annexed, marked Schedule C, to which the plaintiff refer as a part of this his complaint, and that in pursuance of such agreement the said Vose, Livingston & Co. did, on or about the day and year last aforesaid, discontinue the said action, and dissolve the said injunctional order so made, granted and served therein as aforesaid.

21. The said plaintiff avers, upon information and belief, that the said defendant Newcomb Cleveland, on or about the seventh day

of October, A. D. 1857, in a certain action then pending in the district court of the United States for the district of Wisconsin, wherein said Newcomb Cleveland was plaintiff, and the La Crosse and Milwaukee Railroad Company was defendant, the said defendant Newcomb Cleveland then and for a long time before, and at the commencement of said action, being a resident and citizen of the State of Illinois, by the judgment and consideration of the said court, recovered a judgment therein against the said La Crosse and Milwaukee Railroad Company, for the sum of one hundred and twelve thousand two hundred and seventy-one dollars and seventy-six cents, damages and costs, which said judgment, the said plaintiff is informed and believes, was subsequently assigned by the said Cleveland to the said defendant James B. Cross, and is now held by him.

876 22. The said plaintiff is informed and believes that on or about the second day of October, in the year one thousand eight hundred and fifty-seven, the said defendant Selah Chamberlin, in a certain action then pending in the said district court of the United States for the district of Wisconsin, wherein the said Selah Chamberlin was plaintiff, and the said La Crosse and Milwaukee Railroad Company was defendant, the said Chamberlin then and there, and at the time of commencing said action, being a resident and citizen of the State of Ohio, by the judgment and consideration of the said court, and by the confession of the said La Crosse and Milwaukee Railroad Company, recovered a judgment against the said La Crosse and Milwaukee Railroad Company for the sum of six hundred and twenty-nine thousand one hundred and five dollars, damages and costs.

23. And the said plaintiff, upon information and belief, alleges that the said two judgments are subsequent liens upon the property of the said company described in the said deed of trust, executed by the said company to the said plaintiff, hereinbefore set forth, to the lien created by the said last-mentioned deed of trust.

24. And the plaintiff is informed and believes, and upon such information and belief alleges, that subsequent to the execution and delivery of the said indenture or deed, dated the twenty-eighth day of January, A. D. 1858, made by the said La Crosse and Milwaukee Railroad Company to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, a copy whereof is hereto annexed, and marked Schedule B, and subsequent to the recovery of the said two judgments against the said company hereinbefore set forth, and subsequent to the making of the said agreement between the said company and the said Vose, Livingston & Co., dated the 28th day of January, A. D. 1857, a copy whereof is hereto annexed, marked Schedule C, and in or about the months of February and March, A. D. 1858, the said company issued, sold, and otherwise disposed of, an additional amount of bonds, which had theretofore been made and countersigned, purporting to be issued pursuant to and secured by the said deed of trust, dated December 31st, A. D. 1856, made by the said company to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, amounting nominally to five hundred and nine thousand dollars, or thereabouts, and which said last-mentioned bonds had not

been issued, sold, or delivered by the said company prior to the said twenty-eighth day of January, A. D. 1858, but had remained the property of the said company and in the possession of the said company, its officers and agents, or some one of them, up to that time. And that afterwards, and on the 19th day of January, A. D. 1858, and during the month of February, A. D. 1858, and after the making of the said indenture by the said company to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, dated the 28th day of January, A. D. 1858—a copy whereof is hereto annexed, and marked Schedule B—and after the making of the said agreement in writing between the said company and the said Vose, Livingston & Co., dated the said twenty-eighth day of January, A. D. 1858, a copy whereof is hereto annexed, marked Schedule C, the said plaintiff is informed and believes, and upon such information and belief alleges the said company made and the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp countersigned and registered an additional issue of bonds amounting to one and one-half million of dollars, which last mentioned bonds were issued pursuant to the provisions of the said deed of trust, bearing date the 31st day of December, A. D. 1856, a copy whereof is hereto annexed, marked Schedule A, as modified by the said indenture, made by the said La Crosse and Milwaukee Railroad Company, bearing date the said 28th day of January, A. D. 1858, a copy whereof is hereto annexed and marked Schedule B; and pursuant to the stipulation contained in the said agreement in writing between the said company and the said Vose, Livingston & Co., bearing date the said 28th day of January, A. D. 1858, a copy whereof is hereto annexed and marked Schedule C, and were disposed of by the said company as hereinafter set forth; and the said plaintiff submits and insists that if the said five hundred and nine thousand dollars of said bonds so disposed of by the said company, after the said 28th day of January, A. D. 1858, and the said one and one half million of dollars of the said bonds so made, countersigned and registered after the date last aforesaid, are a lien upon any of the property of the said company described in and conveyed by the said deed of trust, so executed by the said La Crosse and Milwaukee Railroad Company to the plaintiffs, as hereinbefore set forth; they constitute a lien thereon subsequent to the lien thereon created by the said deed of trust, so executed by the said company to this plaintiff, and the bonds issued, sold, and disposed of by the said company, under and which are secured by the said deed of trust, so executed by the said railroad company to the said plaintiff, take priority of the two million nine hundred thousand of the said bonds of the said company last issued as hereinbefore set forth, and are entitled to be first paid out of any fund which may arise out of a sale of the property conveyed by the said deed of trust, so executed by the said company to the said plaintiff.

25. The said plaintiff is informed and believes, and upon such information and belief alleges that all the bonds issued, countersigned, registered, and disposed of by the said company, and purporting to be secured by the deed of trust made by the said company to the

said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, bearing date the 31st day of December A. D. 1856, above mentioned, and said indenture made by and between the same parties, bearing date the 28th day of January, A. D. 1858, also above mentioned, or either of them, amount in the aggregate nominally to the sum of four million of dollars, and that of this sum all of said bonds which were issued, sold, and disposed of by the said company, subsequent to the making and delivery of the said deed of trust by the said company to the plaintiff hereinbefore set forth, and the issue, sale, and
877 delivery of the bonds of the company issued thereunder and secured thereby, that is to say: about two million nine thousand dollars of the bonds were issued and disposed of by the said company at merely nominal rates, and in some instances without any consideration whatever; and that none of the said latter amount were disposed of by the said company at rates exceeding thirty cents on the dollar.

26. The said plaintiff is informed and believes, and upon such information and belief alleges, that of the said four million of dollars of bonds so made, issued and disposed of as aforesaid, and countersigned and registered by the said defendants, Greene C. Bronson, James T. Soutter and Shepherd Knapp, one million five hundred thousand dollars thereof being those issued, countersigned, registered and disposed of, on and after the 29th day of January, A. D. 1858, were all or a large portion thereof disposed of by the officers or a majority of the directors of the said La Crosse and Milwaukee Railroad Company, at prices not exceeding thirty cents on the dollar, and at prices greatly below their market value, to persons, who, at the time such bonds were disposed of, were directors or officers of the said company, and that such disposal of the said last mentioned bonds was in fraud of the rights of the stockholders and creditors of the said company, and in fraud of the rights of the holders of the bonds of said company, issued, sold and disposed of under and pursuant to the said deed of trust, by the said company executed and delivered to the said plaintiff as aforesaid, and the said plaintiff submits and insists that the said one and a half million of dollars of the said bonds, so last issued and disposed as aforesaid, are absolutely void.

27. And the plaintiff further shows that he is informed and believes, that on or before the first day of June, A. D. 1859, the said La Crosse and Milwaukee Railroad Company had completed about sixty miles of its said line of road, from Madison, by the way of Portage City, to St. Croix river or lake, between townships twenty-five and thirty-one, viz: from Portage City to Tomah, and became thereby entitled to one hundred and twenty sections of the lands granted by Congress to the State of Wisconsin, by the act of Congress hereinbefore mentioned, to aid in the construction of certain railroads in said State, and granted by the said State to the said La Crosse and Milwaukee Railroad Company, to aid in the construction of said line of railroad, by the said act of the legislature of the State of Wisconsin, of the 11th day of October, 1856, hereinbefore mentioned, for every twenty miles thereof, that is to say: to three hundred and sixty sections of such land, in all containing two hundred

and thirty thousand four hundred acres, which lands are of great value, and as the plaintiff is informed and believes, of the value of upwards of one million of dollars. That such lands are not embraced in nor covered by the said mortgage or trust deed to the said plaintiff.

28. The said plaintiff further shows that he is informed and believes that the said defendants, Greene C. Bronson, James T. Soutter and Shepherd Knapp, trustees, the Milwaukee and Minnesota Railroad Company, a corporation created and existing under, by and in virtue of the laws of Wisconsin, Lawrence Graham, Donald D. Scott, Sebre Howard, Selah Chamberlain, Moses M. Davis, Newcomb Cleveland, James B. Cross, Mercantile Bank, Roger Rogers, William Bump, Sarah J. Harvey, Abram Vanderpoel, Ephraim Kingsley, Lafayette Thayer, Clarence Vanderpoel, Alfred Vanderpoel, Andrew Dunn, Samuel B. Emory, James Wolstanholme, Ebenezer Higgins, George R. Mowry, Henry R. Eastman, Henry L. Simmons, Edwin C. Litchfield, Nathaniel S. Bouten, Stephen D. Goff, Azel E. Tallman, L. F. Billings, Elias K. Goodnow, and Martha A. Dickinson, have or claim to have some interest in or lien upon the said mortgaged premises and property described in the said deed of trust so made by the said La Crosse and Milwaukee Railroad Company to the said plaintiffs and hereinbefore described, or in some part thereof, which interest or lien, if any, has accrued subsequently to the lien of the said mortgage or deed of trust so made to said plaintiff as aforesaid.

29. That the said plaintiff is informed and believes, that no proceedings have been had at law, nor any suit or action commenced by or on behalf of the said plaintiff, or any holder of any bonds of the said company, secured by the said mortgage or deed of trust so executed by the said company to the said plaintiff as aforesaid, or any or either of them, for the recovery of the said sum secured by the said bonds so issued by the said company, and countersigned by the said plaintiff, and the said mortgage or deed of trust so executed and delivered by the said company to the said plaintiff as aforesaid, and hereinbefore mentioned and set forth.

Wherefor the said plaintiff demands judgment that the said defendant, the La Crosse and Milwaukee Railroad Company, may be adjudged to pay to the said plaintiff the said principal sum of money above mentioned, which is secured by the said bonds so issued, sold and disposed of, by the said company, and countersigned and registered by the said plaintiff, and which are secured by the said mortgage or deed of trust, executed and delivered by the said company to the said plaintiff, as hereinbefore set forth, with the arrears of interest now due, or hereafter to become due and payable thereon, together with the costs and expenses of this action, and in default thereof that the said defendants above named, and each and every of them, and all persons claiming under or through them, or either of them, subsequent to the commencement of this action, may be foreclosed of all interest, lien and equity of redemption in the said mortgaged premises, described in the said mortgage or deed of trust, executed and delivered by the said defendant, the La Crosse and Milwaukee Railroad Company, to the said plaintiff, hereinbefore set forth, and which said premises and property are hereinbefore described, and

878 that the said mortgaged premises and property may be sold; that the proceeds thereof may be applied to the payment of the costs and expenses of this action, and the payment of the amount due on the said several bonds of the said La Crosse and Milwaukee Railroad Company, made by the said company, and countersigned and registered by the said plaintiff, under and pursuant to the provisions of said mortgage or deed of trust, executed by the said company to the said plaintiff, and hereinbefore set forth, and which bonds are secured by the said last-mentioned mortgage or deed of trust, and which have been issued, sold, delivered, and disposed of by the said company, and are now outstanding, as aforesaid, for the principal sums secured thereby, together with interest thereon, up to the day of payment; and that the said defendant, the La Crosse and Milwaukee Railroad Company, may be adjudged to pay any deficiency that may remain, after applying all said moneys, so applicable thereto; that an account may be taken of the bonds of the said company secured by the said mortgage or deed of trust to the said plaintiff, and of the amount due on such bonds respectively, for principal and interest, or either, and that the name of the lawful holders thereof may be ascertained; that the said deed of trust, executed by the said La Crosse and Milwaukee Railroad Company to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, bearing date December 31, 1856, and the indenture supplemental thereto, executed by and between the same parties, bearing date the 28th day of January, A. D. 1858, be adjudged and declared to be null and void, and not a valid lien upon the said mortgaged premises, or any part thereof; or a lien thereon subsequent to the lien of the said mortgaged or deed of trust, executed by the said company to the said plaintiff, or if the court shall determine that any part of the said deed of trust, so executed by the said company to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and the said indenture supplemental thereto, and the bonds issued thereunder, or purporting to be secured thereby, is or are a valid lien upon the said mortgaged premises prior to the lien of the said mortgage or deed of trust to the said plaintiff, that an account may be taken of the said bonds issued under the said deed of trust to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and under the indenture supplementary thereto, executed by and between the said company and the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and that all of the said bonds which shall be ascertained on such accounting to have been issued and disposed of by the said company before it had acquired title to the land occupied by it, and commenced the construction of its line of railroad in the said several trust deeds and hereinbefore described, and all of said bonds, being two millions and nine thousand dollars thereof, which were issued and disposed of by the said company subsequent to the making and delivery of the said deed of trust to the said plaintiff, and the issue, sale, and delivery of the bonds issued thereunder and thereby secured; and that all of said bonds which were fraudulently issued, and especially the one and one-half millions of dollars thereof which were last issued, and which were registered and countersigned by the said defendants, Greene C. Bron-

son, James T. Soutter, and Shepherd Knapp, on and after the 29th day of January, A. D. 1858, may be adjudged and declared to be void, and no incumbrance upon the said mortgaged premises, or may be adjudged and declared to be a lien thereon subsequent and subject to the lien of the said mortgage or deed of trust thereon to the said plaintiff; and that the said defendants, Greene C. Bronson, James T. Soutter, and Shepherd Knapp, may be adjudged and required, as to all of said bonds, issued and disposed by said company, and countersigned and registered by the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, which shall be ascertained and adjudged to be a valid and subsisting lien upon the said mortgaged premises prior to the lien of the said deed of trust to the said plaintiff thereon, to exhaust the lands described in and conveyed by the said deed of trust from the said company to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and any interest which the said company has acquired therein, before the resorting to the said mortgage premises hereinbefore described, which are covered by the said mortgage or deed of trust to the said plaintiff, and that the said plaintiff have such other and further relief in the premises as to the court shall seem meet; and that a receiver may be appointed according to the course of practice of this court and with the usual powers of receivers in like cases, of all the property, equitable interest, things in action, effects, moneys, receipts, and earnings of the said defendant, the La Crosse and Milwaukee Railroad Company, so far as relates to the said railroad from Madison, by way of Portage City to La Crosse.

PALMER & STARK, BUTLER, BUTTRICK & COTTRIL,
879 *Attorneys for Plaintiff, Milwaukee, Wisconsin.*

STATE OF WISCONSIN, *Milwaukee County:*

J. Albert Helfenstein, the plaintiff in this action, being duly sworn, says, that the foregoing complaint is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

J. A. HELFENSTEIN.

Subscribed and sworn before me, this 30th day of June, A. D. 1860.

DEAN S. KELLEY,
Notary Public, Milwaukee Co., Wisconsin.

880 *Schedule "A."—Deed of trust.*

Deed of trust made this thirty-first day of December, in the year one thousand eight hundred and fifty-six, (1856,) between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson, James T. Soutter, and Shepard Knapp, trustees, as aftermentioned, all of the city and State of New York, parties of the second part.

Whereas the Congress of the United States, by an act approved June 3, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison, or Columbus, by the way of Portage city, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior, and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers, for six sections in width on each side of said roads, respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land, in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached, as aforesaid, which lands (thus selected in lieu of those sold, and to which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforeraid) shall be held by the State of Wisconsin, for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided, further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided, further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which, by such grant, shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands, when sold; nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other; and the said rail-
881 roads shall be and remain public highways for the use of the

government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road, respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same. Approved June 3, 1856.

And whereas, the legislature of said State of Wisconsin subsequently passed an act, approved October 11, 1856, which is in the following words:

An act to grant certain lands to the La Crosse and Milwaukie Railroad Company, and to execute the trust created by an act of Congress entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3, 1856.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The La Crosse and Milwakee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads, with one or more tracts of lines, from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage city to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior, and to Bayfield; and shall have, possess, exercise, and enjoy the same rights, privileges, functions, franchises, authority, and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses or enjoys with reference to any route it is now authorized to occupy, or any railroad built or to be built thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously as nearly as practicable; and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the third day of June, A. D. 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract in any court whatsoever. It may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same; and it shall also have power and authority to operate its said roads, or either of them, in connection with any and all other railroads which may cross, come up to, or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however,* That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies as last above-mentioned, but all such companies shall be put upon the same equal terms: *And provided, also,* That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connection with the same, shall at any time not be able mutually to agree upon the terms of such connections, then, and in that case, either party may apply to the circuit court of the circuit in which said connection may be sought; and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connection shall exist, and the said award of terms of connection shall be filed in the office of the Secretary of State, and shall be binding on both parties for the term of two years; such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroad—which, by this act, the said La Crosse and Milwaukee Railroad Company is authorized to construct—all the interest and estate, present and prospective, of this State, in or to any and all the lands granted by the government of the United States to the
882 State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior, and to Bayfield, by virtue of an act of Congress entitled "An act granting a portion of the public lands to the State of Wisconsin, to aid in the construction of railroads," approved June 3d, 1856, together with all and singular the rights, privileges and immunities con-

ferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said land shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses; and the same shall be applied to no other purpose whatsoever: *And provided, further*, that the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say: Whenever twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed, as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company, and so, from time to time, until said roads are completed; and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever any such twenty miles are completed, so as to admit of running regular trains of cars over the same; and the governor of the State shall, in his official capacity, and in behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall, by virtue of the provisions of this charter, be entitled to any of said lands, a deed in fee simple of any and all of the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed, so as to admit of running regular trains over the same, and so on, from time to time, so that the sales of land by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall, from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises

herein conferred upon the said La Crosse and Milwaukee Railroad Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is, by the existing laws of the State, required to pay, in place of taxes upon its road now constructed, or which it may hereafter construct under the present charter, and, in addition thereto, it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road to be built by said company, in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of said affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed as may be by law prescribed, to examine the books and papers of said company, and to examine, under oath, the officers, agents, and employés of the said company, and other persons; and if any person so examined by the governor or other authorized person shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of the said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees and judgments against the said company.

The first payment shall be made on the 1st day of March next after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made; and in consideration of such annual payment, the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State, (except special taxes for the improvement of streets and sidewalks,) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operating of said railroad; and the said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from all taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company; and the State shall have a prior lien upon the road of said company, and

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all the appurtenances and stock thereof, for all dues which may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company the same, if any shall remain unsold, shall be offered for sale in limited quantities, at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons or property in boats, vessels, barges, or other water craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, or other water craft, as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of, all their right, title, claim or demand of, in or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has, prior to the passage of this act, actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company, upon principles of justice and equity, for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall pay to any such company, shall take, injure, or destroy, and the latter company whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds, stock, or lands, or in such other manner as such companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, or destroy, then and in that case each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person; and in case they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall constitute a board of commissioners, whose duty it shall be to ascer-

tain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11 This act, and all grants herein contained, shall cease and be void unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment therefor, as in this act provided, is hereby declared to be taken for public use so soon as the said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two millions of dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, shall be kept open for not less than three
884 days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed, in cash, but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two millions of dollars, the same shall be reduced to that amount by deducting such sums as may be necessary pro rata from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of said last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company, under its corporate seal, was on the same day, deposited in the office of the Secretary of State.

And whereas said railroad company, for the purpose of constructing its road from Madison, by way of Portage City, to St. Croix river or lake, has determined to borrow a sum of money not exceeding ten million of dollars, and to issue its bonds for the re-payment of the moneys which may be borrowed, with the interest thereon; nine thousand of which bonds, (exclusive of the numbering and interest warrants or coupons,) will be substantially in the following form: "United States of America, State of Wisconsin. The La Crosse and Milwaukee railroad company. Know all men by these presents, that the La Crosse and Milwaukee railroad company acknowledge themselves to be indebted to the bearer hereof in the sum of one thousand dollars, lawful money of the United States, for money borrowed for the construction of their road from Madison to the St. Croix river or lake, which sum they agree to pay to the bearer hereof, on the first day of February, in the year of our Lord 1877, at the Bank of the Republic, in the city of New York, with interest at the rate of seven per centum per annum, payable in the city of New York, semi-annually, on the first day of February and the first day of August in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. Said railroad company reserves the right to satisfy and discharge this bond at any time before the principal becomes due, by paying to the holder thereof the sum of eleven hundred dollars, with the interest up to the time of such payment, so far as the same may not have been previously paid. This is one of nine thousand bonds, all of the same tenor, and numbered from 1 to 9,000, respectively, which, with two thousand bonds for the sum of five hundred dollars each, numbered from 1 to 2,000, respectively, make in the aggregate the sum of ten millions of dollars, to secure the payments of all which bonds a deed of trust has been executed by said railroad company to Greene C. Bronson, James T. Soutter and Shepard Knapp, conveying all such interest as said railroad company has acquired, or may hereafter acquire, in all the lands granted to said railroad company by the act of the legislature of the State of Wisconsin, approved October 11, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting certain lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856," so far as the lands granted by said act of the legislature are applicable to the construction of the road of said railroad company from Madison, by way of Portage City, to St. Croix river or lake, estimated to be about one million of acres; and also conveying all such interest as

such railroad company has acquired, or may hereafter acquire, in said road from Madison to St. Croix river or lake, and in the road from Portage City to La Crosse, with all the equipments and other things pertaining to said roads. Reference to which trust deed bearing date, the day of December, 1856, and reciting the said acts of Congress and the legislature, is hereby had and made for a more full description of said lands, roads and other property, and the interest thereby conveyed to said trustees.

In witness whereof, said railroad company has hereto affixed its corporate seal, with the names of its president and secretary, the first day of February, in the year of our Lord 1857.

[L. S.]

President.
Secretary.

Registered and countersigned by the trustees, this day of 185 .

} Trustees.

And two thousand of which bonds will be in the like form, but for the sum of five hundred dollars each.

And whereas said railroad company has determined to se-
885 cure the payments of such bonds as may be issued as aforesaid, in the manner herein provided.

Now therefore this deed witnesseth that the said railroad company, in consideration of the premises and of the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and confirm unto said parties of the second part, all and singular the several tracts, pieces or parcels of land, which now are, or may hereafter be, or constitute the site of the roadway, turnouts, engine-houses, workshops, depots and other buildings, and all other lands and real estate, which now constitutes or may hereafter constitute or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also, all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter. And also, all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been, or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils and other personal property, which have been, or may hereafter be procured, in connection with said roads, or either of them; and also, all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said roads.

And furthermore and upon the consideration aforesaid, the said railroad company has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and

confirm unto said parties of the second part, all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin, hereinbefore mentioned, so far as the said lands pertain, or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land; together with all and singular the hereditaments and appurtenances belonging, or in anywise appertaining to the lands and real estate hereby conveyed, or intended to be conveyed; and it is hereby declared to be the intention of the parties to these presents, to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges and franchises of said railroad company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix river or lake, had already been designated and conveyed to said railroad company.

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed to the said parties of the second part and the survivors and survivor, successors and successor of them, their, and his heirs and assigns forever, as joint tenants, and not as tenants in common. In trust, nevertheless, and upon the trusts, terms and conditions herein expressed.

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to possess, hold and enjoy said roads from Madison to St. Croix river or lake, and from Portage City to La Crosse, with the equipments and all other things appertaining to said roads, and use the same and take and receive the income and profits thereof in the same manner as though this deed had not been made.

Second. When said road, from Madison to St. Croix river or lake, shall be surveyed and located, and the particular lands granted as aforesaid, to aid in the construction thereof shall be ascertained, said railroad company will make schedules of the several sections and parcels of said lands, and affix thereto the minimum prices at which the same are to be sold, which prices shall in the aggregate for all of said lands amount to the sum of ten million of dollars at the least, and will furnish such schedules, duly certified by said railroad company, to said parties of the second part, together with an affidavit of the president and secretary of said railroad company that, to the best of their knowledge, information and belief, the minimum prices have been fairly affixed, having reference to the relative values of the different sections and parcels of land; and whenever said railroad company shall certify, in writing, to said trustees that it has contracted for the sale of any section or parcel of said land at a sum not less than

the minimum price affixed to the same, and ten per centum, at the least, of the consideration money shall be paid to said trustees, and a bond and mortgage in the proper form from the purchaser to the trustees, securing the payment of the residue of the consideration money, with the interest thereon, as herein after mentioned, shall be delivered to the said trustees, the mortgage having been first duly acknowledged and recorded, the said trustees will thereupon make, execute and acknowledge a deed conveying to such purchaser, his heirs
886 and assigns, all the right, title, interest and estate of the said trustees of, in and to the section or parcel of land so sold, with a covenant that they have not done any act, matter or thing to defeat or prejudice their title to the lands so conveyed. The principal sum, secured by the bond and mortgage of the purchaser, must be made payable on or before the first day of February, one thousand eight hundred and seventy-five, and the interest thereon must be at the rate of seven per centum per annum, and be payable annually. The deed of the trustees to the purchasers will bear even date with the bond and mortgage, and will specify the true amount of consideration money, and the manner in which the same has been paid or secured.

Sales may be made in like manner of any section or parcel of said lands, at a less sum than the minimum price affixed to the same in such schedules, provided the president or secretary of said railroad company shall make and furnish to said trustees an affidavit that the price agreed on is, in his opinion, the full market value of the land so sold; and provided, also, that the aggregate sums on all sales then and previously made shall be equal to or above the aggregate for all the land sold as specified in said schedules.

Third. The consideration money on any such sales of land may be paid, either in whole or in part, by delivering to said trustees to be cancelled one or more of the bonds which may have been issued by the railroad company as aforesaid, at their par value; and payments upon any such mortgage as aforesaid may be made by delivering to said trustees one or more of such bonds of the railroad company as aforesaid at their par value, and two or more purchasers may unite and pay a part or all of the aggregate amount of consideration money on their purchases, or a part on all of the aggregate amount of their mortgages in like manner.

Fourth. All moneys which may be received by said trustees under or in pursuance of this trust, after deducting therefrom their compensation for accepting and executing the trust, and all costs, counsel fees, charges, and other expenses, shall constitute a sinking fund for the redemption and payment of the bonds, so to be issued by the railroad company as aforesaid, and shall be faithfully applied to that object; and until the moneys shall be so applied the same shall be deposited in one of the trust companies in the city of New York, upon the best terms which can be procured for the same; and whenever there shall be any money so on deposit, said trustees may, in their discretion, apply the same to the purchase of the bonds which may have been issued by the railroad company as aforesaid, at their market value in the city of New York, provided such market value shall not exceed the par value thereof; and whenever the sum so on

deposit shall exceed twenty-five thousand dollars, the surplus beyond that sum shall be so applied by said trustees; and in case a sufficient amount of bonds to absorb such surplus cannot be obtained at par in the city of New York, said trustees shall, on the written request of said railroad company, make purchase of bonds, at a premium not exceeding ten per centum, if the same can be had in the New York market.

Fifth. Whenever the trustees shall receive any of the bonds above mentioned in payment for lands sold, or on mortgages, or shall purchase any bonds, as above provided, the same, with any unpaid interest warrants or coupons annexed thereto, shall be immediately cancelled, and shall thereafter only be held as vouchers by said trustees.

Sixth. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, it shall thereupon be lawful, and said trustees are hereby authorized and empowered, in their discretion, to sell at public or private sale, for the best prices which can be obtained for the same, all or any portion of the lands mentioned in such schedule, for the purpose of obtaining the necessary funds to satisfy such default, and may appoint one or more agents or attorneys to make such sales, execute conveyances to the purchasers, and receive the purchase-money; and if the sum in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, and the same cannot be satisfied within a reasonable time by such sales of bonds, or if default shall be made in the payment of the principal sum of said bonds at maturity, said trustees may thereupon, in their discretion, either in person or by their attorney or attorneys, agent or agents, appointed for that purpose, enter into and upon and take possession of all and singular the said road from Madison to St. Croix river or lake, and from Portage City to La Crosse, and all the other property, real and personal, hereinbefore conveyed, or intended to be conveyed, and may operate said road, and take and receive the income and profits thereof, and may sell all and singular the said roads, and all the other property, real and personal, hereby conveyed or intended to be conveyed, either at public or private sale, and execute and deliver to the purchaser or purchasers deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company, of, in, or to said property, and every part and parcel thereof, including the rights, liberties, privileges, or franchises of said railroad company in respect to the roads which may be sold as aforesaid; but before any sale of the said bonds, or either of them, or the rights, liberties, privileges, and franchises aforesaid, shall be made at auction, notice of such intended sale shall be published, once in each week for twelve weeks at the least, in two newspapers published in the city of New York, and in three newspapers, at least, published in the State of Wisconsin, one of which shall be published in the city of Milwaukee, and should any further notice be required by the laws

of the State of Wisconsin, the same shall be given ; and on the written request of the holder or holders of the major part in amount of the bonds then outstanding, the trustees shall proceed to sell and convey said property in the manner hereinbefore provided.

887 Seventh. Said railroad company will cause this deed to be duly recorded in all proper places, and will satisfy and discharge all taxes, charges, liens, and other burdens, which either exist or may hereafter be imposed or arise on the whole or any part of the property hereby conveyed or intended to be conveyed, and said trustees assume no duty or responsibility on those subjects, or in relation to any other matter, except as is herein provided.

Eighth. Said trustees may appoint all such attorneys, counsellors, clerks, and other agents as they may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their selection ; and further, neither of the trustees shall be answerable for the acts, omissions, or defaults of his associates or associate, nor shall either of the trustees be responsible for anything short of gross negligence or wilful defaults in the discharge of his duties.

Ninth. This trust extends to such bonds, and such only, as shall be registered and countersigned by said trustees; and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the trustees will reconvey to said railroad company all their rights, title, and interest of, in, and to all of said trust property which may not have been previously disposed of in pursuance of the trust.

Tenth. All the powers and duties of the trustees may be executed and discharged by any two of them; and in case of the death, incapacity to serve, or resignation of any trustee, all the estate and interest hereby created shall vest in the other trustees or trustee as fully as if they or he only had been named in and had executed the deed.

The supreme court in the first judicial district of the State of New York may remove either of the trustees on the application of his associates, or of the railroad company, reasonable notice being first given to such trustees. Any trustee may resign his trust, and thenceforward be discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company and the other trustees, shall be approved by said supreme court. If at any time there shall be only one trustee capable of acting, said supreme court, on reasonable notice to such trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all rights, titles, interest, and authority under the trust, and subject to all duties and responsibilities in relation to the same as fully as

though he had been originally named as a trustee, and had executed this deed.

Eleventh. Said railroad company will, from time to time, pay all such costs, charges, and expenses as the trustees may sustain, or be put to, in the execution of the trust, and keep them fully indemnified in the premises.

Said trustees hereby accept and covenant, and agree to and with said railroad company, faithfully to execute said trust, and said railroad company hereby covenants and agrees to and with said trustees, the survivors and survivor, successors and successor of them, that said railroad company will, from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to the said trustees, or to the persons who shall then be trustees, all such further conveyances and assurances, and will do all such further acts as may be either necessary or proper for more effectually vesting in said trustees all such rights, title, interest, or estates, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed or intended to be conveyed.

In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be subscribed by its president and secretary; and the trustees have subscribed their names and affixed their seals the day and year first above written.

[SEAL.]

BYRON KILBOURN, *President.*
EDWIN H. GOODRICH, *Secretary.*
Of the Railroad Company.

GREENE C. BRONSON,
JAMES T. SOUTTER,
SHEPARD KNAPP,
Trustees.

E. MARRINER,
S. H. ALDEN,

Witnesses as to Byron Kilbourn, president, and Edwin H. Goodrich, secretary.

J. S. ATWOOD,
JOHN BISSELL.

Witnesses as to Messrs. Soutter and Knapp.

Witnesses for Greene C. Bronson, as to the execution of the foregoing instrument by him:

EDWARD WADE,
S. H. ALDEN.

888 [SEAL.]

STATE, CITY AND COUNTY OF NEW YORK, *ss:*

I, John Bissell, a commissioner for the State, and resident in the city of New York, legally appointed by the governor of the State of Wisconsin to take testimony, acknowledgments, &c., &c., to be used or recorded in that State, and qualified, do, under my hand and offi-

cial seal, certify that on this seventh day of January, 1857, before me personally appeared Byron Kilbourn, to me known, who, being by me duly sworn, said that he resides in Milwaukee, Wisconsin, and that he is president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of the said company, and was affixed thereto by their authority, and that he, as president, and Edwin H. Goodrich, as secretary, subscribed their names thereto by the like authority.

JOHN BISSELL,
Commissioner for Wisconsin.

[SEAL.]

STATE, CITY AND COUNTY OF NEW YORK, *ss:*

I, John Bissell, a commissioner appointed by the governor of the State of Wisconsin, and under the laws of said State, with full power and authority to take acknowledgments or proof of deeds, or other instruments in writing, depositions, and other testimony, &c., &c., in for the State of New York, to be used or recorded in said State of Wisconsin, duly commissioned by said governor and affirmed, dwelling in the city of New York, do, by this public instrument, given under my hand and official seal, certify and make known that on the 7th day of January, 1857, before me personally appeared, in my State aforesaid, James T. Soutter and Shepard Knapp, described in and who executed the annexed instrument, and acknowledged that they executed the said instrument freely, for the purposes therein stated, and I certify that the persons who made the said acknowledgments are known to me to be the individuals described in and who executed said instrument.

JOHN BISSELL,
Commissioner for Wisconsin.

THE STATE OF NEW YORK,
Albany City and County, ss:

Be it remembered that on this seventh day of January, in the year one thousand eight hundred and fifty-seven, before the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contracts, titles of attorney or other writing under seal or not, administer oaths, and to take and certify depositions to be used or recorded in the said State of Wisconsin, appeared Greene C. Bronson, described in and who executed the foregoing instrument of writing, of which the La Crosse and Milwaukee Railroad Company is one of the parties thereto, and the said Greene C. Bronson, James T. Soutter, and Shepard Knapp are other parties thereto, and the said Greene C. Bronson acknowledged that he executed the said foregoing instrument freely for the purpose therein stated; and I certify

that the person who made the said acknowledgment is known to be one of the individuals described in and who executed the said instrument.

In witness whereof, I have hereunto subscribed my name, [SEAL.] and hereto affixed my official seal, this seventh day of January, A. D. 1857.

EDWARD WADE,
Commissioner for the State of Wisconsin.

STATE OF WISCONSIN,
Milwaukee County, ss:

Be it remembered, that on this seventh day of January, A. D. 1857, before me came Edwin H. Goodrich, secretary of the La Crosse and Milwaukee Railroad Company, to me known to be one of the persons who executed the foregoing deed, and acknowledged that he executed the same on behalf of and as the act and deed of the said railroad company, for the use and purpose therein mentioned, freely and voluntarily.

E. MARINER,
[SEAL.] *Notary Public, Milwaukee County, Wisconsin.*

889 *Schedule B.*

An indenture, made the twenty-eighth day of January, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the State of Wisconsin, of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, all of the city of New York, as trustees, as hereinafter mentioned, of the second part.

Whereas, by a certain deed of trust bearing date the thirty-first day of December, one thousand eight hundred and fifty-six, made and executed between the parties hereto, the said parties of the first part, after reciting their intention to borrow a sum of money, not exceeding ten millions of dollars, for the purpose of constructing their railroad, and to issue their bonds for the repayment of the money so borrowed, to an amount not exceeding that sum, did, for the purpose of securing their bonds to the amount aforesaid, so proposed to be issued, grant and convey to the said parties of the second part, as trustees, all and singular the railroad of said company, constructed and to be constructed from Madison, by way of Portage City, to the St. Croix river or lake, and from Portage City to La Crosse, and the appurtenances thereof, and all the lands and premises constituting, or which should thereafter constitute, the site of the roadway of said company, and the turnouts, depots, buildings, and other appurtenances of said road, and the rolling stock, equipments, and other property which had been or should be provided for the said road; and likewise all the right and interest, whether present or prospective, of the said company, in or to the lands granted by the United States in aid of the construction of said railroad, to which

the said corporation was or might be or become entitled, under and by virtue of the act of Congress, and the act of the legislature of the State of Wisconsin, in said deed of trust recited; by which deed of trust provisions were made for the application of the property so conveyed in trust or mortgaged, or the proceeds of the same, to the payment of the interest upon and the redemption of the principal of the bonds so proposed to be issued, in certain modes and upon certain terms and conditions in the said deed of trust specified, as by reference to such deed of trust (which reference is hereby made with the like effect as if said deed and all the provisions thereof were here recited at large) will more fully appear:

And whereas the said The La Crosse and Milwaukee Railroad Company have heretofore caused to be countersigned by the said trustees, bonds under and secured or designed to be secured by the said deed of trust or mortgage, to the amount of two millions five hundred thousand dollars, which have been, for the most part, issued and negotiated, and said company being now engaged in the construction and completion of that portion of the said road between Portage City and La Crosse, have ascertained that in order to complete said road to La Crosse, with the necessary turn-outs, stations, depots, buildings, bridges, and all other appurtenances, it will not be necessary to issue bonds under said deed of trust or mortgage to an amount exceeding in the whole four millions of dollars, including those which have been already issued, and have accordingly resolved and determined that the issue of such bonds for that purpose shall be limited to that amount, and that no lien shall be created by the issue of bonds under said mortgage upon that portion of said road between Portage City and La Crosse, or upon the lands appurtenant to that section of said road, to an amount exceeding in the whole four millions of dollars; and have also resolved more fully and aptly to secure the said bonds issued and to be issued within such amount of four millions of dollars, in the manner and to the effect herein provided and declared:

Now, this indenture witnesseth, that in consideration of the premises, and of one dollar to the said company in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the said bonds issued and to be issued, within the said amount of four millions of dollars, and to induce the future taking of said bonds, as well those heretofore issued as those hereafter to be issued by said company, the said The La Crosse and Milwaukee Railroad Company have covenanted, granted and agreed, and do hereby covenant, grant and agree, to and with the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees as aforesaid, for and on behalf of
890 all such persons and corporations as now are or hereafter shall become or be holders of any of the bonds within the amount of four millions of dollars issued and to be issued, as hereinbefore recited, and to and with the successors of said trustees, that no bonds exceeding in the whole, including those already issued, the said sum of four millions of dollars, shall be issued under said mortgage or deed of trust, bearing date December 31, 1856, so as to make the amounts

thereof liens upon the said road from Portage City to La Crosse, or any part thereof, or upon any of the turnouts, bridges, depots, buildings, or other appurtenances thereof, or upon any of the rolling stock, materials, or other personal property acquired or to be acquired for or in connexion with the same, or upon any of the lands appurtenant to, or acquired or to be acquired under or by virtue of the said acts of Congress and of the State of Wisconsin, by reason of the construction of said road from Portage City to La Crosse, the said section of road from Portage City to La Crosse being in length one hundred and four miles, or thereabouts, and being by the way of New Lisbon, Tomah, and Sparta. But nothing herein contained shall be so construed as to prevent the said company from issuing bonds under said mortgage or deed of trust to such additional amount, not exceeding six millions of dollars, as shall be requisite for completing their said road from the point known as the junction, at or near the town of Tomah, to the St. Croix river or lake, provided the lien thereof shall be so limited as not to interfere with the prior lien, hereinbefore provided for, of the said mentioned bonds for four millions of dollars, upon the said section of road from Portage City to La Crosse, with the appurtenances, and the lands appurtenant to, or acquired in connexion with, that section of road.

And, for the considerations and purposes aforesaid, the said La Crosse and Milwaukee Railroad Company do further covenant, grant and agree, to and with the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees as aforesaid, for and on behalf of all such persons and corporations as now are or hereafter shall become or be holders of any of the bonds within the amount of four millions of dollars, issued and to be issued, as herein first recited, and to and with the successors of said trustees, that notwithstanding the provisions contained in said deed of trust or mortgage, bearing date December 31, 1856, relating to the proceedings to be had in case of default in payment of the interest upon the bonds issued thereunder, it shall and may be lawful for the said trustees, and they are hereby authorized and empowered, in case default shall be made for the space of sixty days after demand thereof, in the payment of interest upon any of the bonds issued or to be issued, within the limit of four millions of dollars, as herein first recited, or in case default shall be made in the payment of the principal of said bonds, or any of them, when such principal shall become due, to enter upon and take possession of all and singular the said road from Portage City to La Crosse, constructed and to be constructed as aforesaid, with all the appurtenances thereof, including rolling stock, and to operate such road and apply the net income realized therefrom to the payment of the interest in arrear upon the said bonds issued and to be issued within the limit of four millions of dollars, as herein first recited; and in case the interest which shall have accrued upon any of such bonds issued and to be issued, within such limit of four millions of dollars, as aforesaid, shall at any time remain unsatisfied for six months after presentation of the coupons for payment, or in case the principal of such bonds, or any of them, shall have fallen due and

shall remain unpaid, the said trustees or their successors may, and upon the written request of the holders of a majority in amount of such bonds they shall sell, either at public or private sale, all and singular the said road from Portage City to La Crosse, constructed and to be constructed as aforesaid, with all and singular the several tracts, pieces or parcels of land which now are or may be, or constitute, the site of the roadway, turn-outs, engine-houses, workshops, depots and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute, or be a part of the said section of road from Portage City to La Crosse; and also all and singular the superstructure of that section of road, whether now made or to be made hereafter, and all the engine-houses, workshops, depots and other buildings, and all the other improvements on or pertaining to said section of road, whether now built and made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on the said section of road, and all the materials, tools, implements, utensils and other personal property which have been or may hereafter be procured in connexion with said section of road; and also all and singular the rights, liberties, privileges and franchises of said railroad company, of every kind and description, relating to the said section of road from Portage City to La Crosse; and execute and deliver to the purchaser or purchasers, deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title and interest, whether legal or equitable, of said trustees and said railroad company, of, in or to the property so sold, and every part and parcel thereof, including the rights, liberties, privileges and franchises of said railroad company, in respect of the road from Portage City to La Crosse, which may be sold as aforesaid: Provided, always, that notice of such sale shall be given in accordance with the provisions in that behalf contained in the said deed of trust or mortgage, bearing date December 31, 1856; and it is hereby declared and provided, that the net proceeds of such sale so made by said trustees shall be applied to the payment of the amount then owing, (whether then due or yet to become due.) for principal and interest upon the said bonds, within the amount of four millions of dollars, issued and to be issued, as herein first recited; and in case the said net proceeds shall be insufficient for the full satisfaction thereof, they shall be applied thereto pro rata in proportion to the amounts owing upon said bonds; saving and reserving to the holders of said bonds all their rights, liens and claims for the satisfaction of the balance remaining owing to them. out of the lands and
891 other securities in that behalf provided by the said deed of trust or mortgage bearing date December 31, 1856: Provided always nevertheless, that if such default in the payment of interest should occur before the completion of the said railroad to La Crosse, the trustees shall not take possession of said road in consequence of such default, until such default in the payment of the interest shall have continued six months; and the sale of said road, in consequene

such default, shall not be made until after such default shall have continued twelve months.

And it is hereby expressly declared, granted, and agreed, by the said company, that the provisions herein contained for the security of the said bonds, within the amount of four millions of dollars, issued and to be issued, as herein first recited, and for the enforcement of the liens and securities provided therefor, are in addition to the provisions, liens, and securities made or created in that behalf by the said original deed of trust or mortgage, bearing date December 31, 1856; and that all such original provisions, liens, and securities are, notwithstanding this instrument, to remain in full force and effect, save in so far as conditions of, or limitations in respect of, the manner of the enforcement of such liens or securities are by this instrument qualified or dispensed with.

And the said company do hereby, for the considerations aforesaid, further covenant, grant, declare, and agree to and with the said trustees, for and on behalf of such persons and corporations as now are, or hereafter shall become, or be holders of any of the bonds, within the amount of four millions of dollars, issued and to be issued, as hereinbefore recited, and to and with the successors of said trustees, that all and singular the lots, lands, and real estate whatsoever which the said company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the city of La Crosse, or its vicinity, and all improvements made or to be made thereon, shall be deemed and taken to be appurtenant to the said section of road from Portage City to La Crosse; and for all the purposes of the said original deed of trust or mortgage, bearing date December 31, 1856, and of this instrument, the same shall be deemed to be included in the conveyance or mortgage thereby made to said trustees, and to be covered by the provisions of the said original deed of trust or mortgage, and of this instrument, whether such lots, lands, or real estate shall have been or shall be provided or acquired for actual use by said railroad company for the purposes of their business or not.

And it is further expressly declared, granted, and agreed by the said company that the entire proceeds of the sales of the lands granted by the State of Wisconsin, under the act of Congress of June 3, 1856, to aid in the construction of the roads of the said company, so far as said lands pertain to, or are, or shall be derived from the construction of that portion of their said road constructed, and to be constructed, from Portage City westward to the junction, so called, at or near the town of Tomah, being a distance of sixty-one miles, or thereabouts, from Portage City, embracing about three hundred and seven thousand two hundred acres, after deducting therefrom all charges, counsel fees, and expenses incurred by them in and about this trust, shall be by said trustees disposed of, and applied, in the first instance, to the payment of whatever sum or sums may be due or owing upon the four millions of bonds hereinbefore referred to, in accordance with the provisions of the before-mentioned deed of trust or mortgage, bearing date December 31, 1856; and the

surplus, if any, after the full satisfaction of said bonds, shall be divided *pro rata* among the holders of such certificates as may be issued by the said company, in connexion with the said bonds, allowing to the holders of privileged stock which has been heretofore issued in connexion with such bonds, and which shall not be surrendered, such proportion, if any, of the said surplus proceeds as they may be entitled to; which said certificate, to be issued in connexion with said bonds, shall be in substance as follows:

This certificate entitles the holder of first mortgage land-grant bond No. —— to dividends of such surplus as may be realized by the trustees under the provisions of a certain deed of trust or mortgage of this company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, dated January 28, 1858, from the sales of the public lands granted by the State of Wisconsin to this company to aid in the construction of its land-grant road so far as said lands pertain to, or are, or shall be derived from the construction of that portion of their said road constructed, and to be constructed, from Portage City westward to the junction, so called, at or near the town of Tomah, being a distance of sixty-one miles, or thereabouts, from Portage City, embracing about three hundred and seven thousand two hundred acres, after providing for the first mortgage land-grant bonds issued under the above-mentioned mortgage or deed of trust upon the pledge of said lands, in the proportion that one thousand dollars bears to the sum of four millions of dollars of such bonds, issued and to be issued, under the provisions of the above-named mortgage or deed of trust; or in case the holders of any of the bonds heretofore issued under the said mortgage or deed of trust, with the accompaniment of the privileged stock, so called, shall decline to surrender the certificates for such privileged stock in exchange for certificates of this character, then in proportion to the amount of certificates of this character issued, and to be issued, to accompany the bonds issued and to be issued, within the above-mentioned limit of four millions of dollars, after allowing to the holders of the privileged stock above referred to, which may not be surrendered, such proportion, if any, of the said surplus proceeds of said lands as they may be entitled to.

892 Such surplus shall be divided by the trustees whenever the amount realized shall be equal to five per cent. upon the amount of the bonds entitled to this privilege. No responsibility attaches to the holder of this certificate for any charges or assessments.

Milwaukee, Wisconsin, January 28, 1858.

——, *President.*

——, *Register.*

In testimony whereof, the said La Crosse and Milwaukee Railroad Company, in pursuance of a resolution of their board of directors to that effect, have to this instrument affixed their corporate seal, and caused the same to be attested by their president, and the said Greene

C. Bronson, James T. Soutter, and Shepherd Knapp, have hereunto set their hands and seals the day and year first above written.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
By STEPHEN CLARK. *President.*
[L. S.] JACKSON HADLEY, *Secretary.*

Witnesses :
PRENTIS DOW.
D. E. WHEELER.

J. P. C. Cottrill, A. R. R. Butler, witnesses as to signature of Jackson Hadley.

STATE OF WISCONSIN,
County of Milwaukee.

Be it remembered that on the 10th day of February, eighteen hundred and fifty-eight, before me personally appeared Jackson Hadley, to me known to be the person who executed the foregoing instrument as secretary of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same as the free act and deed of said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned.

J. P. C. COTTRILL,
Notary Public, residing in Milwaukee County, Wisconsin.

CITY, COUNTY AND STATE OF NEW YORK, *ss:*

Be it remembered that on this 30th day of January, A. D. 1858, before the subscriber, a commissioner in and for said State of New York, appointed by the governor of the State of Wisconsin to take the acknowledgments and proof of the execution of deeds and other instruments in writing under seal or not, to be used or recorded in the said State of Wisconsin, appeared Stephen Clark, described in and who executed the above instrument of writing, as the president of, and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument freely, for the purposes therein stated ; and I certify, that the person who made the said acknowledgment is known to me to be the individual described in and who executed the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. 111 Broadway, New York, the day and year first above written.

Given under my hand and official seal, the day and year above written.

ORLANDO L. STEWART,
Commissioner for Wisconsin.

893 *Schedule C.*

Memorandum of an agreement made this 28th day of January, in the year one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, of the first part, and Vose Livingston & Co., of the second part.

First. The said company execute simultaneously herewith the instrument bearing even date herewith, providing for limiting the issue of their bonds, known as first mortgage land-grant bonds, constituting a lien upon the road from Portage City to La Crosse, and the lands appurtenant thereto, to four millions of dollars, including those already issued, and providing certain additional securities therefor, and additional remedies for enforcing the mortgage or deed of trust, originally made for securing said land-grant bonds.

Second. The said company agree to procure the existing lease of their railroad to Selah Chamberlain, to be so modified as the net revenues of said road constructed, and to be constructed, from Portage City to La Crosse, shall, during the existence of that lease, be applied in the first instance to the payment of the interest on the four millions of land-grant bonds issued, and to be issued, as mentioned in the instrument mentioned in the last article.

Third. The said company stipulate that if it shall be found that the effect of the provisions contained in the instrument provided for in the first article hereof, or the lien or security provided for the above-mentioned four millions of dollars of lands, will be or be liable to be impaired or interfered with by anything contained in the mortgage upon the said land-grant road, executed subsequent to the mortgage or deed of trust, bearing date December 31, 1856, such subsequent mortgage being known as eight per cent. bond mortgage, and dated October 1, 1857, the contents of which are unknown to Vose, Livingston & Co., the said company will not hereafter issue, or permit to be issued, any bonds under or purporting to be secured by the said eight per cent. bond mortgage, and that they will cancel and destroy all such eight per cent. bonds heretofore signed or countersigned, and now remaining on hand unissued, and will, as far as shall be practicable, call in and cancel the bonds issued under said eight per cent. bond mortgage, which are now outstanding.

Fourth. The said company agree to procure from said Selah Chamberlain an instrument in proper form, providing that the judgment obtained by said Chamberlain against said company, and now in force, or claimed to be, shall be subsequent in lien to the lien created for the security of the four millions of said land-grant bonds issued and to be issued, as referred to in the first article of this agreement.

Fifth. The said company will punctually pay, upon presentation thereof, the coupons for interest due February 1st, 1858, upon the land-grant bonds held by Vose, Livingston & Co., and all others outstanding.

Sixth. Vose, Livingston & Co. agree that, upon the fulfilment by the company of their agreement hereinbefore contained, they will discontinue their suit now pending in the supreme court of this State,

against said company and others, and dissolve the injunction therein, each party paying their own costs in said suit, and the undertaking given on procuring said injunction being cancelled; and likewise that they will discontinue their suit now pending in the State of Wisconsin, against said company, each party paying their own costs therein; and that provided the said company shall observe and fulfil the stipulations on their part in this instrument contained, the said Vose, Livingston & Co. will not interpose any obstacle or objection to the issue by said company of a sufficient amount of land-grant bonds to make the whole issue thereof four millions of dollars, as provided by the instrument mentioned in the first article hereof; provided, that such land-grant bonds, to the extent of the one million five hundred thousand dollars, permitted beyond the two and a half million of
894 bonds countersigned prior to the end of the year one thousand eight hundred and fifty-seven, shall be applied to complete the said road to La Crosse, and that the said company shall make a contract with Selah Chamberlain or some other responsible party, to complete said road to La Crosse, and receive in full as satisfaction therefor not exceeding said one million five hundred thousand dollars of land-grant bonds; the performance of which contract shall be guaranteed to said company by John H. Reynolds, Alfred Noxon and Seth R. Foster.

Seventh. The said company agree that in case the road shall not be finished to La Crosse by the thirty-first day of December, one thousand eight hundred and fifty-nine, or in case the company shall abandon the construction of the road from Portage City to La Crosse, or suspend the work thereon for the space of six months, Vose, Livingston & Co. shall be entitled, and they are hereby irrevocably authorized and licensed, at their option, to receive and take back as their own property so much of the iron originally purchased from them by said company as shall not have been actually laid upon the said road from Portage City to La Crosse, upon their delivering or tendering to said company to be cancelled a sufficient amount of said land-grant bonds, within the issue of the four million of dollars above provided for, estimating said bonds at eighty per cent. of the face, to pay said company for the iron so taken back, at the rate of fifty-five dollars per ton of twenty-two hundred and forty pounds, in bonds; and if the said company shall have paid duty on any of said iron so taken back by Vose, Livingston & Co., shall, in addition to the price above named, pay them the amount of such duties in cash.

And the said company hereby irrevocably grant to Vose, Livingston & Co. the full power and authority, in case, under the above provisions, they shall become entitled and shall elect to take back any of the iron bought from them, to use the necessary means to obtain the actual possession of such iron, and said company agree that in such case they will execute such documents, and do such acts, as shall be requisite to enable Vose, Livingston & Co. to withdraw said iron from bond, in accordance with the provisions of the laws of the United States in that behalf; provided, such demand of iron and such tender of bonds shall be made by Vose, Livingston & Co. prior to the first day of July, eighteen hundred and sixty.

Eighth. Vose, Livingston & Co. agree that if the company shall faithfully carry out the agreements on their part, herein contained, they will interpose no obstacle or objection to the laying the iron purchased from them by said company, upon the said road from Portage City to La Crosse.

In witness whereof, the said La Crosse and Milwaukee Railroad Company have hereunto affixed their corporate seal, and caused the same to be attested by their president; and said Vose, Livingston & Co. have hereunto set their hands and seals, the day and year first above written.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
By STEPHEN CLARK, *President.* [L. S.]
VOSE, LIVINGSTON & CO. [L. S.]

{ Corporate seal of the La Crosse & M. R. R. }

895 *Exhibit B.*

And for a second and further answer, these defendants say that they have been informed that the matters, facts, and statements contained in the first twelve sections of the printed copy of the complaint in this action, as numbered, being the first seventy-five folios thereof, (except as to the time of the issue and sale of bonds under the said plaintiff's deed of trust,) are substantially true as alleged and stated, and that the several matters and things therein named took place substantially as set forth in said complaint, but that they have no personal knowledge in relation thereto, and leave the plaintiff to such proof thereof as he may be advised.

The said defendants admit that the La Crosse and Milwaukee Railroad Company, on or about the 31st day of December, in the year 1856, made its certain trust deed of that date between the said company, of the one part, and these defendants, as trustees, as parties of the second part, which deed was duly executed by the
896 parties thereto, and delivered to these defendants, and was afterwards, and on the 13th day of January, 1857, recorded in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, and that Schedule A attached to said complaint is a true copy of said trust deed.

That on or about the first day of February, in the year 1857, the said La Crosse and Milwaukee Railroad Company made its several negotiable bonds of the date, for the amount payable at the time, and in the manner, and with the interest, named in said complaint. That twenty-five hundred of said bonds, amounting to two millions and five hundred thousand dollars, and no more, were registered and countersigned by these defendants prior to the first day of October, in the year 1857. That, as these defendants are informed and believe, nineteen hundred and ninety-one of the said bonds, amounting in the aggregate nominally to one million nine hundred and ninety-one thousand dollars, were issued, sold, and disposed of by the said La Crosse and Milwaukee Railroad Company; but these defendants have no knowledge or information as to whether the balance of the

bonds issued by said company under the trust deed given to these defendants were issued, sold, or disposed of by said company subsequent to the time when the bonds secured by the said trust deed given to said plaintiff were made, registered, countersigned, issued, sold and delivered.

That, on information and belief, these defendants admit that on the 31st day of December, 1856, said railroad company had
897 not located its entire line from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse, and that said company had not at that time acquired the title, or become the owner, of all the land now occupied by said road, its engine-houses, and other buildings, but said defendants, on information and belief, state that a part of said line had been located, and a part of said right of way and ground had been acquired, and a portion of said road was then graded and being built. That the line of said road, as described in said trust deed to these defendants, intersects the main line of the La Crosse and Milwaukee road about one mile east of the depot buildings, as located and built at Portage City, and that on the 31st day of December, in the year 1856, the line of said road was located from said point of intersection westward to said depot building, and that the same was graded and fitted for the rails, or nearly so; and, also, that said road was then located at the point on said line known as Kilbourn City, and that a portion of the grading was done at or near that point, and that a preliminary survey of the entire line from Portage City to La Crosse had been made. That the said La Crosse and Milwaukee Railroad Company was one entire company, and that its entire line of road, as then projected from Milwaukee to La Crosse, and from Madison, by way of Portage City, to the St. Croix river or lake, between townships 25 and 31, was one entire road, and the right to build and operate it one entire franchise, and that the entire road, property, and franchise belonged to said
898 company as an entirety, and that it was all subject to the payment of the debts contracted by said company, and that, after any portion of the same was located and built, said road was, in contemplation of law, in existence throughout its entire length, according to the rights given to the company by its charter and franchises, so that the whole or any part thereof could be mortgaged, sold, and conveyed, according to the powers given said company by its charter, the laws amendatory thereof, and the general laws of the State of Wisconsin.

That, at said time, said La Crosse and Milwaukee Railroad Company had built and completed its line of road from Milwaukee nearly to Portage City, and had acquired most of the rights of way for the line of said road between said cities, and had built extensive depot and other buildings at Milwaukee and at other points between said city of Milwaukee and Portage City, and that said company had acquired, procured, and provided, and did then own, a large number of locomotives, engines, and other rolling stock, and equipments of various kinds and descriptions, for the said La Crosse and Milwaukee

railroad, and which were then used on said road, so far as constructed, and which have ever since been used on said road, and on the entire line thereof, as fast as the same was completed, and are now being used on said road from Milwaukee to La Crosse. That said company had then procured, and did then own, a large amount of mate-
899 rials, tools, implements, utensils, and other personal property, which had been procured in connexion with the said La Crosse and Milwaukee railroad.

And the said defendants further show that, by virtue of the several acts in the said complaint named, and of the acts amendatory to the acts to incorporate the La Crosse and Milwaukee Railroad Company, and the general laws of said State relating to railroads, said company was fully authorized to make, execute and deliver the said trust deed to these defendants, and that the same is now, and ever since its execution has been a valid lien, charge and incumbrance upon the said line of road therein described, and on the property therein mentioned, and every part and parcel thereof, and that the same is a lien prior and superior to the lien of the said plaintiffs' trust deed or mortgage to the full amount of the bonds issued under the same, together with interest thereon, as hereinafter particularly stated and set forth.

That as to the matters stated in the 17th section of the printed copy of the complaint, contained in folios 90 to 93, inclusive, these defendants say that they have no knowledge or information sufficient to form a belief. They admit the making execution of Schedule B, attached to said complaint, and that the same was duly recorded, as stated in said complaint.

These defendants admit that on the 17th of October, 1857, said La Crosse and Milwaukee Railroad Company had an office and transacted business in the city of New York, in the State of New York; that said defendants then resided there; that said Prentiss Dow was an agent of said company, and had in his possession, or under his
900 control, five hundred and nine of the bonds, so as aforesaid countersigned by the defendants, which said bonds had not at that time been sold by said company, and were then the property of said La Crosse and Milwaukee Railroad Company; that on the said 17th of October, 1857, Francis Vose, Edward Livingston, and Charles L. Perkins, as plaintiffs, commenced a suit in the supreme court of the State of New York, against said La Crosse and Milwaukee Railroad Company, these defendants, and Prentiss Dow, as defined by the service of a summons, as stated in said complaints; that the complaint in the action so commenced was of the nature and to the effect stated in this action; that an injunction was issued in said action, so commenced, and served on the defendants therein, and that said suit remained pending, and said injunction in full force, until about the 28th day of January, 1858, during which time no more of the bonds of said company, secured by the trust deed to these defendants, were issued, sold, or disposed of by said company.

On information and belief, these defendants await the making and execution by said company and Vose, Livingston & Co., of the agreement marked Schedule C attached to said complaint, and that there

upon said suit, so commenced in the supreme court of New York, was discontinued and said injunction was dissolved, as stated in said complaint.

On information and belief, these defendants admit the re-
901 covery of the judgment by Necomb Cleveland, and its assignment to James B. Cross, also the recovery of the judgment by Selah Chamberlain, as stated in said complaint, and that they are liens upon the property, or some portions of it, described in the said deed of trust to said plaintiff, but whether superior or inferior to the lien of said plaintiff's trust deed, said defendants are uninformed and cannot state.

On information and belief these defendants admit that, on or after the 28th day of January, 1858, said La Crosse and Milwaukee Railroad Company issued, sold, and otherwise disposed of said five hundred and nine bonds of one thousand dollars each, being the same bonds theretofore in the hands or under the control of said Prentiss Dow, and a part of the first twenty-five hundred bonds so as aforesaid countersigned by these defendants.

These defendants further admit that, subsequent to the said 28th day of January, 1858, they registered and countersigned bonds made by said La Crosse and Milwaukee Railroad Company, and purporting to be secured by said trust deed given to these defendants, as modified by the agreement made on the said 28th day of January, a copy of which is annexed to said complaint, marked schedule B, to the amount of one million five hundred thousand dollars, and delivered the same to said company, and, as these deponents are informed and believe, said company subsequently issued, sold and disposed of the same.

These defendants show that bonds, in the aggregate. to the amount of four millions of dollars have been registered and counter-
902 signed by them, purporting to have been issued by said company, and secured by the trust deed to these defendants; of which amount, two millions five hundred thousand were so registered and countersigned prior to the modification of January 28, 1858, and one million and four hundred thousand dollars subsequently thereto, and, as these defendants are informed and believe, all of said bonds have been issued, sold, and disposed of by said company to divers persons and firms, and that they are all now held by actual, bona fide purchasers. And these defendants submit and insist that the whole of said issue of bonds is a first, prior, and superior lien upon the premises described in said deed of trust given to these defendants to any and every other claim, demand or lien of any kind or description whatever, upon said premises and every part and parcel thereof.

On information and belief these defendants deny that about two millions and nine thousand dollars of said bonds, or any other amount, were issued and disposed of by the said company at merely nominal rates, or without any consideration whatever, and aver that all of said bonds are valid and subsisting liens upon the property and premises described in said deed of trust, prior and superior to all other liens or encumbrances thereon.

On information and belief, these defendants admit that, prior to the first day of June, 1859, the La Crosse and Milwaukee
903 Railroad Company had completed about sixty miles of its line of road from Madison, by way of Portage City, to St. Croix river or lake, viz., from Portage City to Tomah, and became thereby entitled to three hundred and sixty sections of land granted by Congress to the State of Wisconsin, by act of Congress, and that such lands are not embraced or covered by said plaintiff's mortgage, and that said lands would be of some value could the title thereto be procured from the State, but of what value these defendants cannot state; but these defendants show that the title to these lands has never been obtained by said company, and that it is unable to obtain such title; that title thereto can be acquired only upon producing a certificate of the governor that the company is entitled thereto; and that the governor has heretofore refused, and still does refuse, to grant such certificate, upon some pretence to these defendants unknown; and that in consequence thereof no title thereto has been, or can be obtained, and for that reason said lands have hitherto been, and still are, of no use or benefit to said company or to the bondholders secured by the deed of trust, to these defendants.

And these defendants further say that, as to all the other matters and things contained, and statements made, in said complaint, and not herein answered unto, these defendants have no knowledge or
904 information sufficient to form a belief.

And these defendants ask that said plaintiff's complaint, so far as it affects these deponents, their rights, or said deed of trust so as aforesaid given to them, or the rights of the holders of the bonds secured by said trust deed, be dismissed by this honorable court, with costs to said defendants in this behalf, most wrongfully sustained.

CARY & PRATT.

Atty's for Defendants, Bronson, Soutter and Knapp.

Helfenstein's exceptions to marshal's report of sale

905 And on same day came J. Albert Helfenstein, by his counsel, and filed his exceptions to the marshal's report of sale, as follows, viz:

Circuit court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees,
vs.
LA CROSSE and MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, and others.

Exceptions taken by the said J. Albert Helfenstein to the report of D. C Jackson, esq., marshal of the United States for the said district, of the sale of the mortgaged premises in this cause, reported by him to have been made on the 2d day of October, A. D. 1862, under and by virtue of the decree in this cause made on the 13th day of January, A. D. 1862.

First. As to the sale of the land ordered to be sold by the said decree.

1st exception. For that the said marshal shows in and by his said report that he did not offer for sale or sell any known or specific tracts of land, but did offer for sale and sell a vague and undefined claim of title to all the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company by the acts of Congress and of the State legislature, without its appearing whether the said railroad company had acquired any title to any and what quantity of such lands.

2d exception. For that the said marshal so sold the said lands for a wholly inadequate price under circumstances to deter bidders from bidding an adequate price therefor.

Second. As to the sale of the railroad, appurtenances, and franchise ordered to be sold by said decree.

906 3d exception. For that the said marshal reports in this behalf a sale which he did not make, the bid which he reports as the highest and best bid made in this behalf not having been made in fact at such sale, and the report being in this behalf untrue in fact.

4th exception. For that the said marshal reports that he sold the mortgaged premises last mentioned for a wholly inadequate price under circumstances to deter bidders from bidding an adequate price therefor, as appears by the evidence filed in this cause.

5th exception. For that said marshal shows in and by his said report that he so sold the mortgaged premises last mentioned by a vague and uncertain description, not indicating the extent of the estate or franchise so sold or the rights of a purchaser thereunder.

6th exception. For that it appears by the evidence in this cause that the said Bronson, Soutter and Knapp caused the marshal to make such sale in violation of an injunctional order made by the circuit court of Dane county, in a certain cause wherein they are defendants, and wherein they have submitted their rights and equities in and under their said mortgage; and that notice of such injunctional order was given at said sale; and that, whether or not the said marshal could of right disregard such injunctional order, such injunctional order was calculated and had a tendency to deter bidders from bidding at said sale and from bidding an adequate price for the mortgaged premises.

907 7th exception. For that it appears by the evidence in this cause that the purchasers of the mortgaged premises at the said sale purchased for themselves and others, under a combination to make such purchase so great and extensive as to deter bidders and prevent competition at said sale.

8th exception. For that it appears by the evidence in this cause that the purchasers of the mortgaged premises at the said sale purchased for themselves and others, under a combination to connect the railroad so purchased with another railroad, and to sever the same wholly or in part from the eastern division of the La Crosse and Milwaukee railroad, and thereby to sever the franchises of the La Crosse and Milwaukee Railroad Company, and to injure the

interests of all persons in the said eastern division, against the terms and policy of the charter of the said railroad company.

9th exception. For that this defendant, as appears by the record in this cause, has appealed from the final decree herein to the Supreme Court of the United States, and that no confirmation of said sale ought to be made pending such appeal.

10th exception. For that on the 28th day of July, A. D. 1862, said marshal had no lawful power, right, or authority to adjourn said sale until October 2, 1862, or until any other time; and hence had no power or authority to make said sale on said October 2d, 1862.

11th exception. For that said advertisement of sale, and said notices of the adjournment therefor, were informal and insuf-
908 ficient; the proofs of the advertisement of said sale are informal and insufficient, and said report is informal and insufficient, and said sale was irregularly made, and made without authority of law, and should therefore be set aside.

Wherefore the said J. Albert Helfenstein excepts to the said marshal's report, and humbly prays that the same, and the sale thereby reported, may not be confirmed, but may be altogether set aside.

BUTLER, BUTTRICK & COTTRELL and
PALMER & STARK,
Sol'rs for J. Albert Helfenstein.

909 And on the same day came Francis Vose by his counsel Mr. Ryan, and filed his exceptions as follows, viz :

Exceptions of Vose.—Marshal's report of sale.

CIRCUIT COURT OF THE UNITED STATES, District of Wisconsin.

FRANCIS VOSE,
vs.
GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees, the LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others.

The complainant in this suit having filed his bill of complaint therein on the 27th day of September, A. D., 1862, against all the parties in a certain other cause then and still pending in this court, wherein the defendants, Greene C. Bronson, James T. Soutter, and Shepherd Knapp, are the complainants, and the defendant, the La Crosse and Milwaukee Railroad Company, and all the other defendants in this suit, are defendants, which said suit of the said Bronson, Soutter, and Knapp is instituted and prosecuted for the foreclosure of a certain mortgage of the said La Crosse and Milwaukee Railroad Company; and the complainant in this suit having in and by his bill prayed that the decree in the said suit of the said Bronson, Soutter, and Knapp might be opened and amended so as to let in the complainant in this suit, and to provide for his equities in the premises, and that in the mean time, and until the said decree
910 should have so provided, the sale of the mortgaged premises

ordered to be sold under and by the said decree in the said suit of the said Bronson, Soutter, and Knapp, might be postponed; and that complainant in the suit having upon the filing of this said bill moved this court that the said sale be so postponed, on which motion this court then declined to act, leaving the complainant in this suit to seek his remedy in the premises by objection to the confirmation of such sale when made; now comes the complainant in this suit and files his exceptions by leave of this court to the marshal's report of sale in the said suit of the said Bronson, Soutter, and Knapp.

E. G. RYAN,
Sol., & of Counsel for Complainant.

Circuit court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER and SHEPHERD KNAPP, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, and others.

Exceptions taken by the said Francis Vose to the report of D. C. Jackson, esq., marshal of the United States for the said district, of the sale of the mortgaged premises in this cause, reported by him to have been made on the 2d day of October, A. D. 1862, under and by virtue of the decree in this cause made on the 13th day of
911 January, A. D. 1862.

First: as to the sale of lands ordered to be sold by the said decree:

1st exception.—For that the said marshal shows in and by his said report that he did not offer for sale or sell any known or specific tracts of land, but did offer for sale and sell a vague and undefined claim of title to all the lands granted, or intended to be granted, to the said La Crosse and Milwaukee Railroad Company by the acts of Congress and of the State legislature, without its appearing whether the said railroad company had acquired title to any and what quantity of such lands.

2d exception.—For that the said marshal so sold the said lands for a wholly inadequate price, under circumstances to deter bidders from bidding an adequate price therefor.

Second, as to the sale of the railroad's appurtenances and franchises ordered to be sold by the said decree:

3d exception.—For that the said marshal reports in this behalf a sale which he did not make; the bid which he reports as the highest and best bid made in this behalf not having been made in fact at such sale, and the report being in this behalf untrue in fact.

4th exception.—For that the said marshal reports that he sold the mortgaged premises last mentioned for a wholly inadequate price, under circumstances to deter bidders from bidding an adequate price therefor, as appears by the evidence filed in this cause.

5th exception.—For that the said marshal shows in and by
912 his said report that he so sold the said mortgaged premises last mentioned by a vague and uncertain description, not indicating the extent of the estate or franchise so sold, or the rights of a purchaser thereunder.

6th exception.—For that it appears by the evidence in this cause that the said Bronson, Soutter, and Knapp caused the marshal to make such sale in violation of an injunctional order made by the circuit court of Dane county in a certain cause wherein they are defendants, and wherein they have submitted their rights and equities in and under their said mortgage, and that notice of such injunctional order was given at the said sale; and that whether or not the said marshal could of right disregard such injunctional order, such injunctional order was calculated and had a tendency to deter bidders from bidding at said sale, and from bidding an adequate price for the mortgaged premises.

7th exception.—For that it appears by the evidence in this cause that the purchasers of the mortgaged premises at the said sale purchased for themselves and others under a combination to make such purchase so great and extensive as to deter bidders and prevent competition at said sale.

8th exception.—For that it appears by the evidence in this cause that the purchasers of the mortgaged premises at the said sale purchased for themselves and others under a combination to connect the railroad so purchased with another railroad, and to sever the
913 same, wholly or in part, from the eastern division of the La Crosse and Milwaukee railroad, and thereby to sever the franchises of the La Crosse and Milwaukee Railroad Company, and to injure the interests of all persons in the said eastern division against the terms and policy of the charter of the said railroad company.

9th exception.—For that the said Francis Vose has a large equitable interest under the said mortgage, which he is now prosecuting in this court by his said bill of complaint, and that the said sale having been made almost entirely for bonds, the confirmation thereof would greatly impede and embarrass, if not wholly defeat, his equitable interest in the premises.

Wherefore the said Francis Vose excepts to the said marshal's report, and humbly prays that the same and the sale thereby reported may not be confirmed, but may be altogether set aside.

E. G. RYAN,
Sol'r, and of Counsel for Francis Vose.

And on the same day the affidavit of Jackson Hadley filed, as follows, viz:

914 *Proposed basis for reorganizing the La Crosse and Milwaukee Railroad Company.*

SEPTEMBER 3, 1861.

Sell the road under decree of foreclosure. Let it be purchased for the benefit of assenting creditors and farm-mortgage stockholders.

Pay the present creditors and that class of stockholders with bonds and stock of the new company, as follows, viz:

Value of property		8,200,000
Divided as follows:		
The mortgage on the whole road to be	4,200,000	
7 p. c. preferred stock	2,000,000	
Common stock	2,000,000	
		8,200,000
Mortgage bonds to be appropriated as follows:		
Reserved for first mortgage, eastern division	886,000	
Reserved for city of Milwaukee	314,000	
To second mortgage, eastern division, 80 p. c	800,000	
Land grants Nos. 1 to 1991, or first issue, at par	1,990,000	
Land grants Nos. 1992 to 2500, or medium issue, at 40 p. c	210,000	
		4,200,000
Preferred stock to be appropriated to pay:		
915 Interest on first issue land grants, at 25 p. c., or 250 per bond	500,000	
To medium Nos., at 25 p. c	125,000	
To second mortgage, eastern division, at 20 p. c.	200,000	
Helfenstein mortgage, at 40 p. c	150,000	
Second issue land grants, at 40 p. c., Nos. 2501 to 3950 of the $1,000 bonds, and Nos. 1 to 100 of the $500 bonds	600,000	
Judgment creditors and unappropriated	425,000	
		2,000,000
Common stock to be appropriated to pay:		
Second issue land grants, at 40 p. c.	600,000	
Farm-mortgage stockholders, at 80 p. c	800,000	
Milwaukee and Minnesota stockholders, ($1,500,000,) at 20 p. c	300,000	
Unappropriated,	300,000	
		2,000,000

916 Agreement between the assenting creditors of the La Crosse and Milwaukee Railroad Company for the purchase of said road and the organizing a new corporation for the benefit of the purchasers, made October 3d, 1861.

Whereas the subscribers to a plan for a "proposed basis for reorganizing the La Crosse and Milwaukee Railroad Company, dated September 3d, 1861, at a meeting regularly called and held October 1st, 1861, duly elected the undersigned, Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis Vose, Fred. P. James, William Gould, and D. M. Hughes, trustees and attorneys of the parties assenting to said plan or basis;

And whereas the said parties at said meeting unanimously passed a resolution in the following words, viz:

"*Resolved*, That the trustees, or a majority of them, elected to carry into effect the plan of purchasing the La Crosse railroad, and of organizing a new corporation of the purchasers, with such modifications as they deem for our interest, are hereby authorized to purchase the whole or any part of the real or personal property of said railroad company, at any foreclosure or other sale that may be made of it, and to organize a new corporation with the usual powers and privileges of similar corporations; and to convey the premises so purchased to said new company; also to do any and all things pertaining to this matter, except to obligate us personally for the payment of money, which a majority of them deem for our benefit, as fully as we might do if personally present; and they may add to their number, or fill any vacancies which may occur."

Now, therefore, in pursuance of the authority so conferred upon us, we do hereby declare and adopt this instrument as and for an agreement by and between the said creditors of the said La Crosse and Milwaukee Railroad Co.; and all certificates, receipts, or other evidences given by us in exchange for bonds or other claims against said road are to be held subject to the provisions herein contained. And this agreement shall not be altered or modified except as provided in the 14th article hereof.

First. That said trustees, or a majority of them, are authorized to purchase the whole or any part of the real or personal estate of the said railroad company, and to convey the same to a new company to be formed for the benefit of the assenting bondholders and claimants entitled to participate in the benefits of this agreement;

Such sale and purchase to be made subject to all the liens, rights, and claims of the holders of any prior mortgage, and the said railroad and corporate property so purchased shall be held subject to the conditions and agreements herein contained and declared, and in trust for the benefit of the assentents hereto.

The said trustees or attorneys shall have power to advise with the trustees prosecuting the suits for foreclosure, and to give full direction from time to time in regard to said suits, or any other which may be brought, affecting in any manner the rights or interests of the assentents, and generally to do any and all things which they deem for the benefit of the assentents, as fully as they might do if personally present.

But this power is limited so that neither the said trustees or attorneys, nor their successors in the trust, nor any person under them, shall have power or authority to do any act or thing whereby any assentent shall become liable to pay any money unless he shall hereafter give his written assent. Nor shall they have power to sell, hypothecate, or in any manner encumber the bonds, coupons, or other evidences of debt which may come into their possession, or in any manner be under their control by virtue of this agreement.

Second. That said trustees, or a majority of them, shall, whenever in their judgment it will best promote the interest of said bondholders

and claimants, organize a new corporation on the following terms, limitations, and conditions, viz:

917 1st. That the name of the new corporation shall be "The Milwaukee and St. Paul Railway Company," of which there shall be nine directors, of whom one-third shall be bondholders, one-third preferred stockholders, and one-third common stockholders.

2d. That the said company shall have no power to create any debts, except a new first mortgage not exceeding $4,200,000 in amount, including the amount of outstanding first-mortgage bonds on the eastern division, at the time of organizing the new company, estimated at that time to be about $886,000, and the Milwaukee city bonds, secured by mortgage on the same property, amounting to $314,000, unless the assent in writing of two-thirds of the bondholders, and also two-thirds of the preferred stockholders shall be first had and obtained, authorizing the same; but this prohibition shall not apply to the assuming of any prior mortgage debts or liens which the road or property of the old company shall be incumbered by at the time of the purchase.

3d. That the preferred stock shall not exceed $2,000,000, exclusive of a sufficient sum to provide for the conversion of the said new first-mortgage bonds, and in all shall not exceed $6,200,000. That it shall be entitled to a dividend of seven per cent. per annum from the net earnings of each current year, after payment of interest on all the mortgage bonds, if the company earn so much during the current year, and before any payment of dividends to any other class of stockholders; if the net earnings of the company are not so much in any one year, then the said preferred stock shall receive for that year a dividend of whatever the said net earnings are, after payment of interest on the mortgage bonds; and said preferred stock shall not have any claim upon the earnings of any other year for the non-payment of dividends of a preceding year.

4th. That the common stock to be issued shall not exceed the sum of $2,000,000, and until the company's net earnings are sufficient to pay interest on all their mortgages, and a full dividend on their preferred stock, the said common stockholders shall not be entitled to vote upon their stock.

5th. That the mortgage deed of trust given to secure the bonds of the new company, and to be received by the assentents, shall be well and faithfully drafted and executed, so as to give them all the security for the payment of their bonds, principal and interest, that counsel learned in the law shall advise to be reasonable and proper for their security and protection. And it shall be a first and only mortgage on the whole road, franchises, and equipments, property, real and personal, of the company, and shall be made to secure the payment of $4,200,000 in bonds bearing interest at seven per cent. per annum, principal and interest payable in the city of New York, interest semi-annually, and the principal payable thirty years from the date of the mortgage.

The mortgage shall also contain a provision for a sinking fund for the payment of said mortgage bonds, by which the new company shall

obligate themselves to pay to the trustees of said mortgage bonds all such sums of money as shall be derived from the sale of any lands which may have been or shall hereafter be donated or granted by either the United States or the State of Wisconsin, to aid in building this road, or that shall in any manner be acquired by said trustees under this agreement, or by the new company, by reason of the foreclosure and sale of any lands heretofore mortgaged to secure the payment of any bonds held by parties assenting hereto. And said lands shall be fairly and equitably valued and classified by the trustees under this agreement, or by such persons as they shall appoint; and upon sale of said lands, said mortgage bonds may be received at par, and accrued interest, in payment therefor, and the bonds thus received in payment shall be immediately cancelled by cutting out the signatures thereto. And said trust deed shall contain all other reasonable and proper provisions for making said lands the most productive and available to the company as a sinking fund for the payment of said bonds.

The trustees of said mortgage shall, immediately after any payment is made them, designate by lot so many of the bonds as they may have money to pay, to which the sum received by them shall be applied in payment. They shall give notice of the numbers of the
918 bonds designated, in two or more of the newspapers printed in the city of New York, and after the first day of the succeeding January or July in each year, the interest on the bonds so designated shall cease, and neither the company or their successors shall be any longer liable for the payment of the interest or principal thereof. Said trustees shall, on said first day of each January and July, pay the principal and interest of said bonds, and cancel and surrender the same to the company, and also the scrip certificate of stock accompanying said bonds.

The bonds thus to be issued and secured may have as a condition that in case of default of interest for six months, then the principal shall become due without demand or notice.

The bonds secured by said mortgage shall be convertible at the option of the holder into the preferred stock, at any time within ten days after any dividend shall have been declared and become payable on said preferred stock.

It shall be further provided, if the bondholders so elect, that the company shall issue, at the time of the delivery of each bond, ten shares of scrip stock in the preferred stock for each $1,000 bond, and five shares for each $500 bond, the certificate of which shall be so framed as to accompany each bond, which stock may be voted upon at all stockholders' meetings, but shall not be entitled to receive any dividends until the bond represented therein shall be surrendered and cancelled, and the surrender of the bond shall be considered the payment for the stock. And should any further legislation be required to authorize the bondholders to vote in this or some other suitable manner, the trustees under this agreement, or the new company, as the case may be, shall apply to the legislature of Wisconsin, in good faith, to get the necessary authority.

The said trust deed shall also contain a provision requiring so many of said $4,200,000 of bonds as are reserved for the first mortgage, eastern division, to be cancelled from time to time as the present sinking fund ($12,000 per annum) on said first mortgage eastern division bonds ($886,000) shall have cancelled of that mortgage.

Third. Such of the assentents to said basis as surrender to said trustees, upon their request, the bonds of said railroad company known as second mortgage eastern division bonds, dated Sept. 1st, 1857, and maturing Sept. 1st, 1870, shall receive the new mortgage bonds of said new company at par, for eighty per cent. of the principal of said bonds, and the said preferred stock for the remaining twenty per cent. of principal, and they shall remit in favor of said new company all interest accrued upon said bonds thus surrendered.

Fourth. Such of the assentents as surrender to said trustees, upon their request, the bonds of said railroad company known as first issue land grants of $1,000 each, and numbered from 1 *a* 1991 inclusive, shall receive the new mortgage bonds of the new company at par for the principal of their bonds, and for accrued interest, twenty-five per cent. upon the principal in said preferred stock—a proportional reduction to be made for overdue coupons not surrendered.

Fifth. Such of the assentents as surrender to said trustees, upon their request, the bonds of said railroad company known as medium issue land grants of $1,000 each, and numbered from 1992 to 2500 inclusive, shall receive the mortgage bonds of the new company at 40 per cent. of the principal, and the said preferred stock for 25 per cent. of the principal, the balance of principal and interest they shall remit in favor of said new company.

Sixth. Such of the assentents as surrender to said trustees, upon their request, the bonds of said railroad company known as the Helfenstein mortgage, shall receive for said bonds 40 per cent. in said preferred stock, and the balance of the principal and interest they shall remit in favor of said new company.

Seventh. Such of the assentents as surrender to said trustees, upon their request, bonds of said railroad company known as second issue land grants, the $1,000 bonds numbered from 2501 to 3950 inclusive, and the $500 bonds numbered from 1 to 100 inclusive, shall receive 40 per cent. of the principal in said preferred stock, and 40 per cent. of the principal in said common stock, and the balance of principal and interest they shall remit in favor of the new company.

919 Eighth. The farm-mortgage stockholders of said railroad company may receive 80 per cent. of the full amount of their old stock in the common stock of the new company.

Ninth. The stockholders of the Milwaukee and Minnesota Railroad Company, except the farm-mortgage stockholders of the La Crosse Company, who are provided for in the eleventh article hereof, if they transfer and surrender their stock upon request of said trustees to them, shall receive twenty per cent. of their Milwaukee and Minnesota Railroad stock in the common stock of the new company at par.

Tenth. It is expressly understood and agreed, by all the parties in interest, that said trustees shall have the power to audit, reject, or

allow, either in whole or in part, any bonds or claims assented hereto, before the issuing of any certificate therefor.

Eleventh. No party shall be considered as having any claim upon the said trustees, or to the benefits of this agreement, unless he or they shall surrender or assign to said trustees the bonds or claims held by said party against said railroad company, with all the unpaid coupons attached, previous to the sale of said road, or any part thereof, or whenever the trustees shall require the same by notice duly advertised or by circular, for which they shall receive, in the first instance, a trustees' certificate or receipt therefor, payable to bearer, and negotiable from hand to hand without endorsement; and whenever he or they shall be requested, they shall surrender said certificate or receipt, and in lieu thereof, and in full satisfaction therefor, shall receive the mortgage bonds of the new company, and the different classes of stock of the same, both at the par value thereof, as herein provided.

Twelfth. The trustees and attorneys appointed under this agreement shall not exceed seven in all, and they may resign their trust and position at any time, and in case of any resignation or vacancy, caused by death, removal, or other inability or incapacity to act, the survivors may fill the vacancy. The said trustees or attorneys shall keep a true record of all their acts and doings under this agreement.

Thirteenth. It is agreed by all the assentents, that in carrying out any of the provisions of this agreement, said trustees or attorneys are hereby authorized, in relation to all matters, exigencies and things not herein specifically provided for, to exercise a liberal discretion in the premises, and further, that a majority of said trustees or attorneys shall have power to act in all cases under this agreement.

Fourteenth. It is further agreed that, upon the written recommendation of six of the seven trustees herein named, and placed before any regular or special meeting of the assentents duly called, at which a majority in interest (as the same may then be) of each class of mortgage bondholders or their assigns assenting hereto, shall be present, and voting in the affirmative, it shall be competent for said meeting to alter or modify this agreement, or any part thereof, and thereafter this agreement shall have the same effect in law and equity, as if said alterations or modifications had been duly incorporated herein, but no assenter hereto, or his legal representative, shall become liable to pay any money (except at his option) by any such action unless he shall have voted therefor or assented thereto. At said meeting, and at all other meetings of the assentents hereto, each mortgage bondholder, having surrendered his bonds to the trustees herein named, shall be entitled to one vote for each $1,000 of the principal of the bonds surrendered.

Fifteenth. Annual meetings of the assentents hereto shall be held in the city of New York, in the month of October in each year, which meeting shall be called by said trustees or attorneys, who shall specify the time and place for holding the same; and at such meeting, or at any special meeting duly called, they shall submit a full and

specific statement of all their acts and proceedings under this agreement.

920 Sixteenth. It is agreed by all the assentents that the time within which mortgage bondholders and others can become parties to this agreement shall be limited to and include the first day of November, 1861, but this limitation may be extended by the trustees or attorneys elected hereunder, if they deem it for the interest of the assentents so to do.

Notice shall be given, by advertisement or otherwise, of the general object of this agreement, and the time within which bondholders can become parties hereto, to the end that all parties interested in the road may have a reasonable opportunity to assent hereto, and secure to themselves the benefits hereof.

ISAAC SEYMOUR,
HORACE GALPEN,
BENJAMIN F. DAWSON,
FRANCIS VOSE,
FRED. P. JAMES.
WILLIAM GOULD,
D. M HUGHES.

Recapitulation.

A second mortgage eastern division bondholder gets first mortgage bonds for 80 per cent., preferred stock for 20 per cent.—in all, 100 per cent.

A land grant bondholder, low numbers, (1 *a* 1991,) gets new 1st mortgage bonds at par, and for interest $250 preferred stock.

A medium No. land grant bond holder (Nos. 1992 *a* 2500) gets new 1st mortgage bonds for 40 per cent. of the principal, and $250 in preferred stock—in all 65 per cent.

A high No. land grant bondholder (2501 *a* 3950 of the $1,000 bonds, and No. 1 *a* 100 of the $500 bonds) gets 40 per cent. in preferred stock and 40 per cent. in common stock—in all 80 per cent.

The office of the trustees is at 29 William street, city of New York, (room 4,) where they are prepared to receive the surrender of the bonds and attend to the duties of their trust.

N. A. COWDREY, *Secretary.*

921 United States circuit court for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees, *against* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN and others. } In Equity.

UUITED STATES OF AMERICA,
District of Wisconsin, ss:

Jackson Hadley, being duly sworn, says that he was present at the sale of the mortgaged premises in this action, made by the marshal

on the 2d day of October, A. D. 1862; that the sum of one hundred thousand dollars was the highest sum bidden at such sale for the lands described in the advertisement of sale; and that the sum of seventeen hundred thousand dollars was the highest sum bidden for the property described in said advertisement aside from the said lands, and said lands and other property were, at said sale, struck off by the marshal at said sums of one hundred thousand and seventeen hundred thousand dollars, and that no larger sums were bidden at such sale. And this deponent further says that the pamphlet hereto
922 annexed, marked Exhibit A, is, as he is informed and believes, a true copy of an original agreement of the nature therein set forth; but deponent is informed and believes that the said Benjamin T. Dawson, named as one of the trustees therein, resigned as such trustee, and one Smith was substituted in his place, and that on the resignation of such Smith, one N. A. Cowdrey was substituted in his place. And deponent further says, that he is informed and believes that said N. A. Cowdrey and said Isaac Seymour and Fred. P. James, named in said Exhibit A are the same persons mentioned in the marshal's report of sale in this action, as the purchasers of the mortgaged premises mentioned therein. And this deponent further says, that he is informed and believes that said trustees mentioned in said agreement marked Exhibit A have, as deponent is informed and believes, made an arrangement on behalf of the persons represented by them for the purchase of the road of the Milwaukee and Western railroad and its property and franchises under an arrangement to complete the same from Columbus on its present termini to Portage City, and to consolidate the same with the division of the La Crosse and Milwaukee Railroad Company from
823 Portage City to La Crosse, which includes the mortgaged premises in this action. Deponent further says, that he is informed and believes that on such consolidation being made, a new corporation is to be formed, in which the present owners of said Milwaukee and Western Railroad Company are to be represented in the sum of two and one-half millions of dollars, or about that sum; and said western division of the La Crosse and Milwaukee Railroad Company, or said mortgaged premises in this action, is to be represented in the sum of four millions of dollars, or about that sum; and deponent further says, that he is informed and believes that neither of the parties, owners, is interested in the first or second mortgages upon the eastern division of said La Crosse and Milwaukee Railroad in the Milwaukee and Minnesota Railroad Company, or in what is commonly called the Helfenstein mortgage, or in mortgage to the city of Milwaukee, upon said eastern division, have assented to said proposed plan of reorganization contained in said pamphlet, marked Exhibit A; and this deponent further says, that he is informed and believes that the parties who now propose to bring about said consolidation herein before mentioned, have agreed upon the following named persons to be the first directors of the new corporation to be form-
924 ed as aforesaid, viz: Alexander Mitchel, George Smith, Russell Sage, Asabel Finch, F. P. James, N. A. Cowdry, D. M. Hughes,

H. Galpen, and Selah Chamberlain; that said Russell Sage, as deponent is informed and believes, is largely interested and a director in said Milwaukee and Western Railroad Company; that said Asabel Finch as deponent, is informed and believes, is counsel for the parties who now propose to bring about said consolidation as aforesaid; that said James, Cowdrey, Hughes, and Galpen are trustees in said agreement contained in said pamphlet marked exhibit "A," and said Chamberlain is the defendant of that name in this suit.

And this deponent further says, that he saw said James, Cowdrey, Mitchel, Sage, Finch, and Chamberlain present at the sale made by the marshal aforesaid, and said James, Sage, and Cowdrey appeared to assist at the same, and said Mitchel, Finch, and Chamberlain to assist thereto. And this deponent further says that he is informed and believes that on or about the day of July, A. D. 1862, said Chamberlain proposed to said trustees mentioned in said pamphlet marked "exhibit A" to sell to them, or said new corporation to be organized, all hi , said Chamberlain's, claims against said La Crosse and Milwaukee Railroad Company, except certain second mortgage
925 bonds held by him secured by mortgage on the eastern division of said road and the judgment in this court in favor of Newcomb Cleveland against said railroad company for the sum of five hundred thousand dollars, as follows: One hundred thousand dollars in first mortgage bonds, two hundred thousand dollars in the prefered stock of said new corporation, and two hundred thousand dollars in cash, with interest from the 1st day of July, A. D. 1862, to be paid before the payment of any dividends on any class of stock; said Chamberlain to receive, as evidence of said two hundred thousand dollars' income or floating debt, bonds in sums of one thousand dollars each, which should be in every respect next in priority of right or lien to the first mortgage bonds proposed in said agreement, contained in said pamphlet marked "Exhibit A," and to be paid from the first net earnings of the road after providing for the amount of interest on said first mortgage bonds in monthly payments.

And deponent further says that he is informed and believes that said Chamberlain at the same time proposed that the balance of said judgment in favor of said Cleveland should be paid in the same manner as the aforesaid sum of two hundred thousand dollars, with the understanding that all parties in interest should use their best efforts to have said Cleveland's judgment paid from the earnings of the
926 eastern division of said La Crosse railroad during the present season of 1862, and said interest on said cash payments to be made semi-annually, and said Chamberlain also proposed to place his claims in the hands of said Alexander Mitchell, as trustee, to hold for the benefit of said Chamberlain until he should be lawfully paid, and said proposition was also conditioned upon said trustees, or those whom they represented, acquiring the road of the Milwaukee and Western Railroad Company.

And this deponent further says that he is informed and believes that said proposition of said Chamberlain has been accepted, and that the said sale, made October 2, 1862, was made and assented to for the purpose, among other things, of carrying out said consolidation

and said proposition and acceptance of said Chamberlain, and the confirmation thereof is being urged, among other things, for the same purpose.

J. HADLEY.

Subscribed and sworn to, this 10th day of October, A. D. 1862, before me.

J. M. MILLER, *Clerk.*

And on the same day came the defendant, J. Albert Helfenstein, by Butler, Buttrick and Cottrell, and Palmer and Stark, and files his motion as follows, viz:

United States circuit court, district of Wisconsin.

927 *Motion on aff., and exceptions by Helfenstein. Set aside sale.*

GREENE C. BRONSON, SHEPHERD KNAPP, and JAMES T. SOUTTER, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, AND J. ALBERT HELFENSTEIN, *et als.*

And now comes the said defendant, J. Albert Helfenstein, by Butler, Buttrick & Cottrell, and Palmer & Stark, his solicitors, and moves the court to set aside the marshal's report of sale filed in this cause, and the sale mentioned in said report, for reasons appearing in the several affidavits, documents, papers, exceptions, &c., on file and of record in this cause.

BUTLER, BUTTRICK & COTTRELL,
And PALMER & STARK,
Solicitors for J. Albert Helfenstein.

And afterwards, on the 14th day of October, 1862, came
928 the parties, by their counsel, and the exceptions to the marshal's report of sale came on to be heard, and not being concluded, the hearing was adjourned until to-morrow morning; and same day receiver's report for month of September, 1862, filed.

October 15, 1862.—This day came the parties by their counsel, and the hearing of the exceptions to the marshal's report of sale was resumed, and not being concluded, the same was adjourned until to-morrow morning.

October 16, 1862.—This day came the parties by their counsel, and the argument of the exceptions to the marshal's report of sale was resumed and concluded.

November 18, 1862.—Receiver's report for month of October, 1862, filed.

December 19, 1862—Receiver's report for month of November, 1862, filed.

And afterwards on the 5th day of January, 1863, came the parties by their counsel, and on consideration of the several exceptions to the confirmation of the sale as made by the marshal, in pursuance of the decree in this case, and of the several motions to set aside said

sale, and of the arguments of counsel thereon, it is ordered by the court that the report of the sale of the lands of the land-grant as described in the decree be not confirmed; that the bidding for the same be opened; and that the marshal do offer for sale at public sale, and sell the said lands, as described in the decree, according to the directions, terms, and conditions of the said decree, on Wednesday, the 25th day of February next, at two o'clock in the afternoon of said day, at the post office in the city of Milwaukee, in this district. That he give notice of the time and place of such sale by advertisement in one paper published in La Crosse, in this State, once in each week for six weeks before the day of sale, and in one paper published in the city of New York, in the State of New York, daily for six weeks' publication of said paper, before said day of sale. That the bidding at such sale be commenced at the sum now bid, of one hundred thousand dollars, unless the bidders shall withdraw their said bid.

And it is further ordered by the court that the several exceptions to the sale of the road and appurtenances, and the several motions to set the said sale aside, be and hereby are overruled; and that the said sale of the said road and appurtenances as made and reported by the marshal, at the sum of one million seven hundred thousand dollars, be and hereby is confirmed, unless the lands of the land grant shall be sold at the sale here ordered of the same, at the sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, with interest from the thirteenth day of January, one
930 thousand eight hundred and sixty-two, the date of the decree, and paid according to the decree; and with leave to move the court to vacate this order respecting the confirmation of the sale of the road on new matters accruing since the hearing of the exceptions in the month of October last.

And on the same day came the Milwaukee and Minnesota Railroad Company, and filed its petition to compel Selah Chamberlain to repay thirty thousand dollars, &c., in the words and figures following to wit:

931 In circuit court of the United States for the eighth circuit and district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, & SHEPHERD KNAPP, trustees, *vs.* THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, and others, def'ts.	In equity.

To the judges of the circuit court of the United States for the eighth circuit and district of Wisconsin.—In equity.

Your petitioner, the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, humbly complaining, shows unto your honors that it is one of the defendants in the above entitled cause, and interested in the decree made therein, and that the La Crosse and Milwaukee Railroad Company, until the 21st day of May last past, was, and for more than five years prior to that time had

been. a corporation existing under the laws of the State of Wisconsin, and that its business affairs had been and were managed and controlled by a board of directors; that about the 21st day of June, A. D. 1858, the said company was indebted to a large amount of floating debt, accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company; and that a large number of farmers along the line of said company's railroad had before then loaned their credit in form of bonds and mortgages to aid said company in the construction and equipment of its said railroad; which bonds and mortgages had been, before then, used by the said company, with a stipulation on its part with and to said farmers to pay the interest that might accrue thereon, and that a large sum of said interest, which said company was bound to pay as aforesaid, had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers to enforce payment of such interest; and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute and perfect, ready to be negotiated. sold, delivered, and transferred in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and year, and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the 1st day of January and July in each year, with coupons for said interest to said bonds respectively attached; and that, to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last-named bonds and the interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "All and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces or parcels of land which then were, or thereafter might be, or constitute the site of the roadways, turnouts, enginehouses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted, or might thereafter constitute, or be a part of, or appertain to, said railroad, whether then made or to be made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether then made or built, or to be built and made thereafter; and all and singu-

lar the locomotive engines and other rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might thereafter be procured for or used in connexion with such railroad.

And also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsina, and, as the plaintiff says, on information and belief, in the offices of the registers of deeds in the several counties through which said railroad passes and was then located.

932 That on the 11th day of August, A. D. 1858, the said company made, signed, and sealed and delivered to said Barnes, trustee, a certain indenture of supplemental mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21, 1858, and did convey to said Barnes, as trustee as aforesaid, in addition to the things in said first mortgage conveyed, the following, that is to say: All and singular the rights, privileges, liberties and franchises of said company of every kind and description; and also all lands granted or intended to be granted to said company, under and by virtue of the act of Congress and the act of the legislature of the State of Wisconsin, in said supplementary mortgage mentioned, and also all the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate therein conveyed or intended to be conveyed; and also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action, of whatsoever nature, which might be owned, or in which said company might have an interest on such day as such company might first make default in the payment of the interest or principal or any part thereof, which might thereafter become due on any of the said bonds issued or to be issued by said company, and to secure which said mortgage was given. That immediately thereafter the said Barnes caused said supplementary mortgage to be recorded, as in the same offices as the said first-named deed of trust or mortgage to said Barnes was recorded as hereinbefore set forth; a copy of which said first mortgage, or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes, are attached hereto, and marked, respectively, Exhibit No. 1 and Exhibit No. 2. And your petitioner further shows, that immediately thereafter said company commenced to deliver the said last-named bonds so secured as aforesaid, in payment of the indebtedness of said company, and for the other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company, and that

all of said bonds were sold, and delivered in payment, and transferred by said company for the purposes and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to, and services rendered for said company, and that large numbers of said bonds are now held by such persons in the said State, or have been by them turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter stated, and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, which are now held by *bona fide* purchasers and owners, or have by them been turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter mentioned. That about the 1st of February, A. D. 1859, the said company having made default in the payment of, or part of, the interest due on said bonds secured as aforesaid, the said William Barnes, in pursuance of the provisions of the laws of the State of Wisconsin, then in force in that behalf, and the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by advertisement; and having previously given the notice required by law in that behalf, on the 21st of May, A. D. 1859, said William Barnes, trustee, sold at public auction, at the court-house in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgage to him, said Barnes, described; and the said William Barnes, trustee, then and there at said sale became the purchaser thereof according to the provisions of the laws of said State of Wisconsin, then in force in that behalf, at and for the sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33,) no other person or body having made any bid, whatever, for the same, and that said mortgages thus became, and were thereby, foreclosed according to the provisions of the laws of the State of Wisconsin, in that behalf then in force; and that said Barnes, by virtue of said purchase, and the provision of the law of the State of Wisconsin then in force in that behalf, became the owner of the property, and franchises, and other things so purchased by him, and thereafter held the same in trust, and only in trust, for the holders of the then outstanding bonds, secured by said mortgages.

And that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds proceeded to organize anew, and then and there elected directors, and took the corporate name "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last-named company all the property and things by him purchased as aforesaid, and thereafter said company proceeded, and conducted its business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company, and thereby became, and ever since have continued, a corporation under and by virtue of the laws

of said State, capable of sueing and being sued; and that said Milwaukee and Minnesota Railroad Company immediately thereafter entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the time of said sale. And your petitioner further shows unto your honor that said bondholders, at said new organization, elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Company, viz: Russell Sage, N. J. Emmons, Hans Crocker, Wm. E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Sill, and —— Battershall, and that said directors immediately thereafter organized the said board of directors by electing and choosing Russell Sage president, N. J. Emmons vice-president, and Dwight W. Keyes secretary of said Milwaukee and Minnesota Railroad Company.

And your petitioner further shows unto your honors, that, by virtue of the said foreclosure of said deeds of trust or mortgages to said Barnes, as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company, and conveyance by said Barnes, as hereinbefore set forth, and the said premises not having been redeemed, as hereinbefore stated, the said Milwaukee and Minnesota Railroad Company, from and after May 21, 1860, became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company, as to all the property and things described in said deeds, and the owner of and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action, and effects of every nature and description, before then belonging to said La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and legal liens and incumbrances thereon as were prior to said first deed to said Barnes; and that the said Milwaukee and Minnesota Railroad Company, being by law an incorporated company, composed of the creditors of the said La Crosse and Milwaukee Railroad Company, and purchasers at said foreclosure sale, (in the manner hereinbefore stated.) as corporators, has a legal right to object to, resist, and set aside all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments, which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company, with intent to hinder, delay, or defraud its creditors; and has the right to object to, resist, and set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company which is apparently a lien or incumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last-named company, which were embraced or described, or intended to be embraced or described, in either of said trust deeds to said Barnes, and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated; and has the right to collect and enforce all actions and causes of action existing in favor of said La Crosse and Milwau-

kee Railroad Company, and conveyed by said trust deeds to said Barnes or either of them.

933 Your petitioner further shows unto your honors that the said complainants in their bill of complaint in the above entitled cause set forth and stated in substance that the La Crossee and Milwaukee Railroad Company, under and by virtue of certain acts and laws, had had granted to it all the lands which had been granted to said State of Wisconsin by the government of the United States to aid in the construction of a railroad from Madison to Columbus, by way of Portage City, to the St. Croix river or lake, and from thence to the west end of Lake Superior and to Bayfield; and that said last-named company on or about the 31st day of December, A. D. 1856, made its mortgage to the said complainants as trustees, whereby said company did grant, bargain, sell, convey, and confirm to said complainants all and singular the several tracts, pieces, or parcels of land which now are, or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops,

934 depots and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and all the other personal property, which have been or may hereafter be procured for or used in connexion with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating to said roads; and the said complainants in and by said bill of complaint prayed that in default of payment the defendants to said cause, and all persons claiming or to claim under any or either of them, or otherwise, might be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises and every part thereof; and that all and singular said mortgaged premises, with the appurtenances, property, and effects in said mortgage described, might be sold under the decree of court.

Your petitioner further shows that the relief prayed by said complainants in their said bill of complaint was entirely satisfactory

935 to this petitioner, and your petitioner made no defence thereto, and the said bill of complaint was taken as confessed as against your said petitioner; and afterwards, on or about the 13th day of January, A. D. 1862, the said district court made a final decree in said cause, ordering the said mortgaged premises sold by the marshal

of said district at public auction according to law; and that said decree, after ordering the lands granted or said to be granted to said La Crosse and Milwaukee Railroad Company, and said railroad and other property, rights, privileges, and franchises to be sold as aforesaid, contained a provision and direction as follows, viz: "And it is further ordered by the court that the said described lands granted by the United States be first sold, and if the proceeds of the sale thereof shall be sufficient to pay and discharge the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, with interest from this date and costs, or if the said sum be released or satisfied or paid into court, further proceedings under this decree shall be stayed."

Your petitioner further shows, that it appears of record in this cause that Hans Crocker, esq., was, by order of the said district court in this cause, on the 7th day of June, A. D. 1860, appointed receiver of the railroad rights, privileges, and franchises described in
936 and conveyed by the mortgage mentioned in and sought to be forclosed by the bill of complaint in the above-entitled cause, and that said Crocker immediately thereafter entered upon and took possession of the same as such receiver, and ever since has been operating said railroad and receiving the rents, revenues, tolls, and incomes thereof, and that he has received as such receiver of such rents, revenues, and income, a large sum of money net, but what precise sum your petitioner is unable to state, all of which ought to have been kept subject to the order of said district court and of this court.

Your petitioner further shows, that it is advised and believes, and therefore submits to the court here, that it is the absolute and exclusive owner of all the railroad and other property and things described in and conveyed by said mortgage, subject to all legal and valid liens thereon prior to the 21st day of June, A. D. 1858, and is entitled to all the rents, revenues, income, and tolls arising therefrom, to be by it applied to the payment of said legal liens existing prior to the day and year last aforesaid, and has a right to insist and demand that the net earnings of said railroad property, rights, and franchises coming to the hand of said receiver should be applied to the payment of the several liens upon said railroad property and franchise in the order of their respective priorities; and that when the fund in the hand
937 of said receiver was sufficient to pay all that was due on liens prior in point of time to the lien of the said mortgage mentioned as aforesaid in said bill of complaint, that the balance thereof should be applied to the payment and satisfaction of what was due on the said mortgage last aforesaid.

Your petitioner further shows, that on or about the 30th day of September, 1857, the said La Crosse and Milwaukee Railroad Company made a pretended lease to said Selah Chamberlain of all its railroad, real property, and franchises, and soon afterwards, and in connexion with said lease, confessed, or suffered to be entered against it in favor of said Chamberlain, a judgment for a large sum of money; and said Chamberlain, about the first of October, 1857,

took possession of the said railroad and property, and held possession of the same, and received the income tolls and earnings thereof for the space of two years and more, and derived and received therefrom large sums of money, to wit, over half a million of dollars.

Your petitioner further represents, that it is informed and believes that on or about the 7th day of October, 1857, one Newcomb Cleveland recovered a judgment in the district court of the United States for the district of Wisconsin against said La Crosse and Milwaukee Railroad Company for about the sum of $111,727\frac{71}{100}$ dollars; that, soon afterwards, the said Cleveland filed in the said court a creditor's bill upon said judgment, making the said Selah Chamberlain a party defendant thereto, and therein charged the said Chamberlain with holding the property and money of said defendant company in
938 fraud of the creditors thereof; that said action, commenced by said creditor's bill, was prosecuted to a final hearing, and in or about the 11th day of February, A. D. 1859, the said district court rendered its decree therein, and therein and thereby adjudged and decreed that the aforesaid lease of the said railroad company to said Chamberlain, and also the said judgment, were fraudulent and void as to the creditors of said company, and thereby the said Chamberlain became liable to account to said court in said action for all the moneys received by him from the tolls, income, and profits of said railroad and railroad property while he held possession of the same under the said lease; and that the decree of said court in said action remains in full force and effect, unrepealed and unreversed.

Your petitioner further represents, upon information and belief, that soon after the rendering of said decree in said action against said Chamberlain, the said Chamberlain purchased the aforesaid judgment of Newcomb Cleveland against said railroad company, and thereby became and ever since has been the owner of the same, and thereby has been enabled to control, and has controlled, the proceedings in said action commenced by said Cleveland against said railroad company and said Chamberlain; and that said Chamberlain has never accounted to said court in said action, or otherwise, for the tolls, earnings, and profits of said railroads and railroad property received by him while he held the same under said fraudulent lease and judgment.

939 Your petitioner further shows, upon information and belief, that on or about the 29th day of June, 1861, the said Crocker paid to said Chamberlain, out of the funds in his hands, as receiver as aforesaid, the sum of ten thousand dollars; and that afterwards, about the 18th day of July, A. D. 1861, the said receiver paid said Chamberlain the further sum of twenty thousand dollars out of the fund in his hands as receiver as aforesaid, both in pretended part satisfaction of said judgment in favor of said Cleveland; that no application was made to said district court therefor, nor did said district court make any order directing either of said payments, but that the Hon. Andrew G. Miller, then judge of said district court, upon the application of the attorneys or solicitors of said Chamberlain, and without any notice whatever to this petitioner of such application,

and out of court, and not on a rule day of said court, directed said receiver to make said payments; and that such direction of said Hon. A. G. Miller was the only warrant or authority upon which said receiver pretended to make such payments, or either of them.

And your petitioner further shows, that it is advised and shows that said payments, amounting to 30,000 dollars, were wrongfully and illegally made by said receiver; that said Hon. Andrew
940 G. Miller had no authority or jurisdiction over said fund, and could not legally direct any part of it to be disposed of by said receiver, and that it is only competent for the court, whose officer the receiver is, to direct the disposition of funds in the said receiver's hands; and your petitioner submits that it is not merely an irregularity in the manner of such payments that your petitioner has a right to complain of, but that such payments out of the fund in said receiver's hands upon a lien subsequent and subordinate to that of the mortgage sought to be foreclosed in this cause, and while the amount on said mortgage remained unpaid would have been erroneous if ordered by the court, and injurious to the legal rights of your petitioner.

Your petitioner therefore prays your honors, in said court, to make an order in said cause commanding said Chamberlain to replace said sum of 30,000 dollars in the hands of said receiver, or in the custody of said court, as your honors may direct; and that such order be enforced by attachment; and that it be ordered that said receiver be not allowed with or for such payments, or either of them, in
941 his accounts with said court.

MATT. H. CARPENTER,
Sol. for the Milwaukee and Minnesota Railroad Company.

DISTRICT OF WISCONSIN, *ss:*

A. Fleming, being first duly sworn, on oath says, that he is a director of the Milwaukee and Minnesota Railroad Company, and makes this verification on behalf of said company because Moses Kneeland, its president, is sick.

He further says, that he has heard read and knows the contents of the foregoing petition, and that the same is true of his own knowledge, except as to the matters and things stated on information and belief, and that as to these things he believes it to be true.

A. FLEMING.

Subscribed and sworn to before me this 5th of January, A. D. 1863.

J. M. MILLER,
Clerk.

Exhibit No. 1.—Trust deed.

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA,
State of Wisconsin.

No.——. $———

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof in the sum of ———— dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bond, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually,

with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

——— ———, *President.*

——— ———, *Secretary.*

Registered and countersigned this ———, 185—.

——— ———, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does, by these presents, grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces or parcels of land which now are, or hereafter may be, or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad; and also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made or to be built or made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connexion with said railroad; and also all and singular the rights, liberties, and privileges, and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired,

943 together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same

might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin, subject, nevertheless, to *liens* already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars. Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four million dollars upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah, to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid mortgages to the aforesaid party of the second part and his successor and his heirs and assigns forever, in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed. *First.* Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made. *Second.* In case default for the space of 15 days shall be made on the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York, and

in a newspaper published in the city of Milwaukee ; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned. *Third.* Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time, during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises, aforesaid. *Fourth.* Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise, or be imposed upon, the property hereby conveyed or intended to be conveyed ; and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided. *Fifth.* This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will re-convey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustee in, about, or for the execution of the trust, and will in all things keep him fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee on the first day of July, eighteen hundred and sixty-one, and annually thereafter

until this trust is closed, the sum of twenty-five thousand dollars; with such sum as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust, at the lowest price he can purchase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

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Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, Such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee, and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his [SEAL.] name and affixed his seal the day and year first above written.

LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
By N. P. STANTON, *President.*
LOCKWOOD L. DOTY,
Secretary of the La Crosse and Milwaukee Railroad Company.
WILLIAM BARNES, *Trustee.* [SEAL]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee.

CLARK, B.,
J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
P. M. JOHNSON.

STATE OF NEW YORK,
County of Albany:

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Seventy-one State street, in the city of Albany, the day and year first above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK,
County of Albany, ss:

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a

commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto and the La Crosse and Milwaukee Rail-
945 road Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. Seventy-one State street, in the city of Albany, the day and year first above written.
[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said coporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and affixed my [SEAL.] notarial seal.

E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

946 EXHIBIT No. 2.

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be farther than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided, further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided, further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands,

in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land, which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands, when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways, for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following—that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same.

Approved June 3d, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856." The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads, with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise, and enjoy the
947 same rights, privileges, functions, franchises, authority, and immunities with reference to the said routes, or any railroad

to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built or to be built thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract, in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connexion with any and all other railroads which may cross, come up to, or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies, as last above mentioned, but all such companies shall be put upon the same equal terms: *And provided, also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connexion with the same, shall at any time not be able to agree upon the terms of such connexions, then, and in that case, either party may apply to the circuit court of the circuit in which such connexion may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connexion shall exist, and the said award of terms of connexion shall be filed in the office of the Secretary of State, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads, which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present or prospective, of this State, in or to any and all the lands

granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That Company in the manner following—that is to say: whenever twenty the said land shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided, further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed, so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company, and so from time to time until said roads are completed; and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed, so as to admit running regular trains of cars on the same; and the governor of the State shall, in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee-simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed, so as to admit of running regular trains over the same, and so on from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such

agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of
948 property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct, under the present charter, and, in addition thereto, it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents, and employees of the said company and other persons, and if any person so examined by the governor or other authorized person shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company.

The first payment shall be made on the first day of March next, after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made; and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State (except special taxes for the improvement of streets and sidewalks) upon all stock in the said La Crosse

and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operation of said railroad, and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company; and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited *qualities* at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other water craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other water craft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States or of this State to aid in the construction of railroads which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge or otherwise dispose of all their right, title, claim, or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree. And if the

said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then and in that case each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall constitute a board of
949 commissioners, whose duty it shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukie Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act, and all grants herein contained, shall cease and be void unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary, pro rata, from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its roads in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and, when thus published, shall take effect and be in force.

And whereas the said railroad company, after the passage of the last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was, on the same day, deposited in the office of the secretary of State:

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined before the date of the indenture hereinafter mentioned, dated June 21st, 1858, between said company of the first part, and said Barnes as trustee of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached:

And whereas also the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in Book of Railroad Mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear:

And whereas also the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances:

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee Railroad Company by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate, which now constitute or may hereafter constitute, or be a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever, which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter.

And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils and other personal property which have been, or may hereafter be, procured for or used in connexion with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued, or to be issued, by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and person[al] and mixed of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, part[y] of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed, or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, States, or corporations lawfully claiming, or to claim, the same or any part thereof, subject, nevertheless, to all legal lines already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments, and

appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid existing legal liens to the aforesaid party of the second part and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be
951 made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But, before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will from time to time, during the continuance of the trust, make, execute, cause to be

duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge, or omission to discharge, of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company that the provision herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture in the same manner as if all the provisions thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

{ [SEAL.] La Crosse & Milwaukee R. R. Company. }

LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
By N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to William Barnes, the said trustee.

JOHN G. WHITE.
ISAAC EDWARDS.

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STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing, as the president and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company,

and acknowleged that he executed the same freely and as the free act and deed of the said La Cro-se and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. Third street, in the city of Milwaukee, the day and year above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the ackowledgment and proof of the execution, deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded September 1st, 1858, at 8 o'clock a. m.

And afterwards, on the 17th day of January, 1863, came Isaac Seymour, Fred. P. James, and N. A. Cowdry, by Messrs. Cary & Pratt, their counsel, and filed their motion to vacate the order *nisi*,

confirming the marshal's report of sale of the road, and also to vacate so much of said order as directs said lands to be resold on the twenty-fifth day of February next, bearing date January 5, 1863, and also to vacate the sale of said road, and that the money paid into court on said sale be returned to said purchasers as follows, to wit:

953 Circuit court for the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP,
v.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

And now comes Isaac Seymour, Fred. P. James, and N. A. Cowdrey, by Cary & Pratt, their solicitors, and move the court now here to vacate the order *nisi*, confirming the marshal's report of sale of the road, and also to vacate so much of said order as directs said lands to be resold on the 25th day of February next, bearing date January 5th, 1863, and also to vacate the sale of said road, and that the money paid into court on said sale be returned to said purchasers.

CARY & PRATT,
Sol'rs for Purchasers.

Filed January 17, 1863.

954 Whereupon it is ordered by the court that the whole of the said order of court made on the first day of this term, (the fifth day of January, instant,) overruling the exceptions to the sale of the road and appurtenances, and confirming said sale and ordering the bidding upon the lands of the land grant to be opened, and the said lands to be again offered for sale and sold on the twenty-fifth day of February next, be and hereby vacated and set aside.

And it is further ordered that the sale of said road and appurtenances and of the lands of the land grant as reported by the marshal, and the said report, be and hereby are vacated and set aside ; and that the said report of sale and all the proceedings subsequent thereto be and hereby are vacated and set aside ; and that the money paid into court as the proceeds of said sale be returned and paid back to the said purchasers, to be receipted for by them or their said solicitors, Messrs. Cary & Pratt. And on the motion of the complainants, by their said counsel, it is ordered by the court that the mortgaged premises be advertised and sold by the marshal according to the decree.

January 27, 1863.—Receiver's report for month of December, 1862, filed.

February 19, 1863.—Receiver's report for the month of January, 1873, filed.

955 And afterwards on the 9th day of March, 1863, came the bondholders secured by the mortgage to the complainants, by Cary & Pratt, their solicitors, and moved the court for an

order in this cause directing the receiver to pay to said bondholders the sum of twenty-five thousand dollars out of the revenues of the road now in his hands to apply on the decree in this cause, as
956 follows, to wit:

And afterwards, on the 9th day of March, 1863, came the complainants, by their counsel, and filed motion as follows, viz:

Circuit court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

And now at this day come the bondholders secured by the mortgage given to said complainants in the bill of complaint named, by Cary & Pratt, their attorneys, and move the court now here for an order in this cause directing the receiver to pay to said bondholders the sum of twenty-five thousand dollars out of the revenues of the road now in his hands, to apply on the decree in this cause.

CARY & PRATT,
Att'ys for Bondholders.

Filed March 9, 1863.

Whereupon it is ordered by the court that there be paid by the receiver out of the revenues of the said road to said bondholders twenty-five thousand dollars, the same to be receipted for by Messrs. Cary & Pratt.

March 21, 1863. Receiver's report for month of February, 1863, filed.

In District Court.

957 And afterwards on the 4th day of April, 1863, the petition in writing of Francis Vose was filed by his attorneys, Messrs. Ryan & McGregor, praying to be allowed for expenses and disbursements in and about this suit, as follows, to wit:

958 *Petition of Francis Vose.*

Circuit Court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*

To the judges of the circuit court of the United States for the district of Wisconsin:

The petition of Francis Vose respectfully shows: That your petitioner is a citizen and a resident of the State of New York; that he was one of the original holders of the bonds secured by the mortgage

mentioned and described in the bill of complaint in the above entitled cause, commonly called land-grant bonds, and to enforce the collection of which said suit was brought, and that he has ever since been and now is a holder and owner of such bonds, and that prior to October, 1861, he had spent much of his time for several years, and much money, in behalf of the said land grant bondholders in and about this suit, and in protecting the rights and interests of the said bondholders.

Your petitioner further shows unto your honors, that after the committee of the assenting creditors of the La Crosse and Mil-
959 waukee Railroad Company was formed in October, 1861, consisting of Isaac Seymour and others, representing $3,888,000 out of the $4,000,000 of said land grant bonds, he presented to said committee a just and true statement in detail of his disbursements on account of and in behalf of said land grant bondholders in the premises prior to October, 1861; and that on the 27th day of February, 1862, the said committee by resolution allowed to petitioner, in addition to the amount of $7,500 previously paid, the balance of his account for disbursements in the premises, amounting to $8,39414, and requested the said trustees, Bronson, Soutter and Knapp, to pay your petitioner the same out of interest moneys ordered to be paid them by the orders of the court made 29th June and 18th July, 1861; a copy of which resolution and of the certificate of the president and secretary of the said committee is hereto attached, as is also the written consent of the said trustees by Clarkson N. Potter, esq., their counsel, to the payment of the said sum, and that the original certified copy of said resolution was delivered to the said trustees.

Your petitioner further shows, unto your honors, that he has never been able to get any part of the said $8,394 14 repaid to him out of the money so ordered to be paid by the orders of 29th June and 18th July, 1861, nor out of moneys ordered to be paid by the order of 9th March, 1863, nor from any other source, though he has made
960 many efforts to procure such repayment.

Your petitioner further shows, that he has never received any payment whatever for his services in behalf of the said land grant bondholders, though he is reasonably entitled to compensation therefor.

Wherefore your petitioner prays your honors to order the repayment to him of the balance of his disbursements, the said sum of $8,394 14, with interest from the said 27th day of February, 1862, out of any interest moneys or other funds of the said trustees or land grant bondholders under the control of the court, or to make such further or other order in the premises as may be just and equitable.

And your petitioner will ever pray, &c.

F. VOSE.

RYAN & MCGREGOR,
Sol'rs for Petitioner.

DISTRICT OF WISCONSIN, *ss:*

Francis Vose, being duly sworn, on oath says, that he has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

F. VOSE.

Subscribed and sworn to before me, this 4th April, 1863.

JOHN P. McGREGOR,
U. S. Court C.

961 NEW YORK, *March* 25, 1863.

Messrs. RYAN & McGREGOR:

GENTLEMEN: Upon applying for payment of the enclosed order out of the twenty-five thousand dollars recently paid by Messrs. Cary & Pratt, I was informed that the above sum had been wholly disposed of in repaying to the committee known as Cowdrey trustees, for services and expenses advanced by them since October, 1861.

The amount of the enclosed order for advances made for the bondholders by myself, during several years previous to October, 1861, for actual disbursements, without any allowance whatever for my services, is $8,394 14
Interest from Feb'y 27, 1862, to April 1st, is 641 45

9,035 59

With the amount of funds on hand due the land grant bondholders, I do not think I should be subjected to longer delay in being reimbursed, and you will please take such steps as you may deem proper for the payment of the order, and give such receipt as may be required.

Yours, truly,

F. VOSE.

962 Delivered to Mr. Dana for Mr. Vose, and Mr. D.'s receipt for Vose taken.

LA CROSSE AND MILWAUKEE RAILROAD,
61 *Wall street, New York, September* 17, 1862.

GENTLEMEN: Mr. Vose has presented the trustees of the land grant mortgage with an order (of which a copy is annexed) on the part of the so-called trustees of creditors, representing nearly all the La Crosse land grant mortgage bonds, for the payment of $12,884 $\frac{71}{100}$ out of the $40,000 ordered to be paid you by the orders of June 29 and July 18, 1861.

Of course the trustees, as you are aware, have no such moneys. The only moneys they have received are the $27,500 you remitted; of this there was paid Mr. Vose, on the order of the first issue bondholders' committee, for interest on these low number land-grant bonds, $7,500, and the remainder ($20,000) was paid the trustees and their coun-

sel for their fees and expenses, and you retain the balance of this $40,000.

Now, although the trustees and their counsel think they should have received more of this money, they are nevertheless now willing to let the balance of this $40,000 be paid to the bondholders, or as they direct and consent, so far as their claims for fees and expenses are concerned, that you, as the holders of the fund, may arrange
963 with Mr. Vose accordingly—less, however, $1,521, the amount of interest (as per mem. below) claimed by Mr. Chas. H. Roberts out of these funds; for, while the trustees by no means admit Dr. Roberts's claim, they do not, since his notice, feel called upon to make any relinquishment of the funds in your hands, except so far as the same exceeds the claim of Dr. Roberts.

Your obedient servant,

CLARKSON N. POTTER.

CARY & PRATT, Esqs.

Mem.—Dr. Roberts claims to own 159 bonds, numbers below 1,191, 55 medium, numbers —, equivalent to 169 low number bonds, on which, after deducting $20,000 of the $40,000 for fees and expenses of the trustees, the proportion, if allowed, would in no event amount to more than $1,521, and if any further fees are allowed out of such $40,000, would be accordingly reduced.

Resolved, That the report of the committee to whom was referred the claim of Mr. Francis Vose for moneys disbursed by him on behalf of the interests of the bondholders in addition to the sum of $7,500 already paid to him, be and is accepted and approved; and that, in accordance therewith, Messrs. Bronson, Soutter & Knapp, or such persons as may have the custody of the same, be and they are hereby requested to pay to Mr. Vose $8,394 $\frac{14}{100}$ on account of his claim,
964 and $4,490 $\frac{59}{100}$ for other purposes of this trust, out of the moneys ordered by the court on the 29th Jnue and 18th July, 1861, to be paid to them as interest, and that the said sums of $8,394 $\frac{14}{100}$ and $4,490 $\frac{57}{100}$, with the $7,500 before paid to Mr. Vose, be considered as applicable to interest under the above mentioned orders of the court.

We, Isaac Seymour, chairman, and Henry E. Glasford, secretary *pro tem.* of the trustees of the creditors of the La Crosse and Milwaukee R. R. Co., representing $3,881,000 out of the $4,000,000 mortgage bonds on said road from Portage City to La Crosse, do hereby certify that the above resolution was regularly passed at a meeting of the trustees held this day.

NEW YORK, *February* 27, 1862.

J. SEYMOUR, *Chairman.*

HENRY E. GLASFORD, *Secretary pro tem.*

(Filed April 4, 1863.)

Whereupon it is ordered by the district judge that the receiver do pay to the said Francis Vose eight thousand three hundred and ninety-four dollars and fourteen cents, ($8,394 $\frac{14}{100}$,) in full of his said claim.

965 And afterwards, on the 21st day of April, 1863, came the Milwaukee and Minnesota Railroad Company, by Mr. Carpenter, its solicitor, and filed its motion as follows, viz., (in the circuit court:)

Petition to vacate order of payment to Vose.

Circuit court of the United States for the ninth circuit and district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.	In equity.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause, and moves the court here to vacate an order made by Hon. A. G. Miller, a judge of this court, on the 4th day of April, 1863, paying to one Vose eight thousand three hundred ninety-four dollars and fourteen cents, because the said judge had no authority to make the same, and because the same was made *ex parte* and without notice.

And for an order to compel the said Vose to replace the said sum of money in the custody of this court, and that said order be enforced by attachment.

MILWAUKEE AND MINNESOTA RAILROAD COMPANY,
By MATT. H. CARPENTER, *Solicitor.*

Filed April 21, 1863.

966 April 22d, 1863.—Receiver's report for month of March filed.

And on the same day came the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and filed its petition, as follows, viz:

Petition of Mil. and Minnesota R. R. Co. to stay sale.

In the circuit court of the United States for the circuit and district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.	In equity.

To the judges of the said circuit court:

Humbly complaining unto your honors, your petitioner, the Milwaukee and Minnesota Railroad Company, one of the defendants to the bill of complaint in this cause, by Matt. H. Carpenter, its solicitor, respectfully represents:

That the railroad and other property mentioned and described, or intended to be described, in the final decree in this cause, have been advertised for sale at public auction on the 25th day of April, A. D. 1863, by the marshal of this district, and will, as your peti-
967 tioner is informed and believes, be sold (under and in pursuance of said decree) at that time, unless stayed by order of this honorable court.

Your petitioner further shows, that such sale will, if it takes place, extinguish the rights of your petitioner to said property therein described at law and in equity, and that the marshal has described the railroad property, franchises, and other property to be sold, by the same description as that contained in the decree, and not otherwise.

Your petitioner further shows, that it has exhibited to your honors this day a bill of review against said Greene C. Bronson, James T. Soutter and Shepherd Knapp, as defendants, in which your petitioner prays that the final decree in this cause may be reviewed, reversed, and set aside for errors manifest upon the face of said decree.

Your petitioner further represents, that the said Bronson, Soutter and Knapp are non-residents of the State and district of Wisconsin, and that neither of them are now within said district, as your petitioner is informed and believes, and that service of subpœna issued on said bill of review cannot be made upon said Bronson, Soutter or Knapp personally within this district.

Wherefore your petitioner prays your honors to order a stay of proceedings in this cause under said final decree until after
968 the said Bronson, Soutter and Knapp shall cause their appearance to be entered to defend said bill of review; and that all proceedings under the final decree in this cause, particularly said sale, may be stayed until after the determination and decree of said court upon the matters and things set forth in said bill of review.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY,
By MATT. H. CARPENTER, *Sol.*

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that the above-named, the Milwaukee and Minnesota Railroad Company, is one of the defendants to the bill of complaint in the above-entitled cause; that he, said Fleming, is a director of said railroad company, and that Moses Kneeland, the president of said company, is confined to his house by illness, and therefore said Fleming makes this verification on behalf of said company.

The said Fleming further on oath says that he has heard read and knows the contents of the foregoing petition, and that the same is true.

A. FLEMING.

Subscribed and sworn to before me this 22d day of April, A. D. 1863.

J. M. MILLER,
Clerk U. S. Court, Wisconsin.

969 And afterwards, on the 23d day of April, 1863, came the Milwaukee and Minnesota Railroad Company by Matt. H. Carpenter, its solicitor, and filed its petition as follows, viz., (in the district court:)

In the district court of the United States, for the district of Wisconsin. In equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, TRUSTEES, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others. } Foreclosure suit.

To the judge of the district court aforesaid:

Humbly complaining unto your honor, your petitioner, the Milwaukee and Minnesota Railroad Company, one of the defendants to the bill of complaint in this cause, by Matt. H. Carpenter, its solicitor, respectfully represents:

That the railroad and other property mentioned and described or intended to be described in the final decree in this cause have been advertised for sale at public auction on the 25th day of April, A. D. 1863, by the marshal of this district, and will, as your petitioner is informed and believes, be sold in pretended pursuance of said decree at that time unless said sale shall be stayed by order of this honorable court, or by injunction from the circuit court of the United States for this district.

970 Your petitioner further shows, that such sale is intended to, and may, have the effect (if it takes place) to extinguish the rights of your petitioner to said property therein described at law and in equity; or would, at least, be a cloud upon the rights of your petitioner therein, and involve great expense and trouble of litigation in relation to the same, and otherwise greatly injure, oppress, and embarrass your petitioner; and that the marshal has described the railroad franchises and other property to be sold by the same description as that contained in the decree, and not otherwise.

Your petitioner further shows, that it has exhibited to the judges of the circuit court of the United States for the ninth circuit and district of Wisconsin a bill of review against said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as defendants, in which your petitioner prays that the final decree in this cause may be reviewed, reversed, and set aside or modified, for errors manifest upon the face of said decree.

Your petitioner further represents, that the property, railroad franchises, and other things described in said decree, were advertised on or about the 17th day of January, A. D. 1863, for sale by said marshal on the 25th day of April, A. D. 1863, in the

973 name of the said district court of the United States for the district of Wisconsin, as appears from a copy thereof hereto attached and marked Exhibit No. 1; and not in the name of the circuit court of the United States for said district, as the same ought to have been advertised. And your petitioner is advised and insists,

that at the time said advertisement was made, and until about the 1st day of March, A. D. 1863, the said district court had no right or authority to enforce said decree by sale, or to make said sale in pursuance of said decree, and that such advertisement was void until about the 1st day of March last, when an act was passed by the Congress and approved by the President of the United States, authorizing said district court to enforce said decree; and your petitioner is advised and insists that the said advertisement has not been published since said district court had authority to make sale of said property, as long as by said decree it is required to be published before a legal sale of said road can be had.

Your petitioner further shows, on information and belief, that so great is the doubt among parties interested, business men and capitalists, as to whether such sale would be legal if made on the 25th day of April under said advertisement, that nothing like its real value will be bidden for any of said property, and that the
972 same will be sacrificed at said sale to the great damage of your petitioners and all other creditors of said La Crosse and Milwaukee Railroad Company.

Your petitioner, therefore, prays your honor, sitting in said district court, to stay the said advertised sale until the said bill of review shall be heard and determined by said circuit court.

And if your honor shall be of opinion that your petitioner is not entitled to such stay of said sale, then your petitioner prays your honor to make an order in said court, directing said marshal to advertise said railroad and other property anew in the name and under the authority of the said district court, or for such other or different order, decree, or direction as your petitioner may be entitled to.

MATT. H. CARPENTER,
Solicitors for Milwaukee and Minnesota Railroad Company.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that the above-named, the Milwaukee and Minnesota Railroad Company, is one of the defendants to the bill of complaint in the above-entitled cause; that he, said Fleming, is a director of said railroad company, and that Moses Kneeland, the president of said company, is confined to his house by illness, and therefore he, said Fleming, makes
973 this verification on behalf of said company.

The said Fleming further on oath says that he has heard read and knows the contents of the foregoing petition, and that the same is true.

A. FLEMING.

Subscribed and sworn to before me this 23d day of April, A. D. 1863.

J. M. MILLER,
Clerk U. S. Court, Wisconsin.

EXHIBIT No. 1.

United States marshal's sale.

District court of the United States, district of Wisconsin.—In equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees, *vs.* LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin I. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastain Kuetzer, Frederick Lind, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Lautkoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy,
974 Horace Galpen, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Shobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereus Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Runi Martin, R. J. Burton, D. M. Corbit, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Taft, Jonathan P. Hopper, D. S. Kingore, Noah Sturtevant, William H. Fessenden, John L. Sutherland, E. Haskell Derby, Frederick Levick, Charles Shepard, C. P. Williams, Orville Oddie, John Pemberton, Niles Heginbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, T. F. Bergen, John J. Vanderbilt, G. S. Boardman, and John Nicholson.

In pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, in the above-entitled cause, I shall sell at public auction, at the post office, in the city and county of Milwaukee, in said district, on the twenty-fifth (25th) day of April, A. D. 1863, at 2 o'clock in the afternoon, the following described mortgaged property, to wit: All and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadway, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said La Crosse and Milwaukee Railroad Company from Madison by way of Portage City to the St. Croix river or lake, between townships twenty-
975 five and thirty-one, and from Portage City to La Crosse, and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops,

depots, and other buildings, and all other improvements on or pertaining to said roads, whether now built or built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the equipments of every kind and description, which have already been or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been or may hereafter be procured for or used in connexion with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description relating to said roads. Also, all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company under and by virtue of an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3d, 1856, and under or by virtue of an act of the legislature of the State of Wisconsin, approved October 11th, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of
976 railroads in said State,' approved June 3d, 1856," so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of lands, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate above mentioned and described. The rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, A. D. 1856, except forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408; and except such proportion or share of said rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee railroad Company hereinbefore mentioned and described bears to the balance or other end of said road since the appointment of the receiver; which said forty box cars, and said proportion of rolling stock purchased by the receiver, are to be sold free and clear of any incumbrance whatever.

The lands hereinbefore mentioned as granted by the United States will be first sold, and if a sufficient sum shall not be realized
977 therefrom to pay the amount adjudged to be due to the complainants for interest, together with costs, then the balance of the mortgaged property hereinbefore mentioned and described will be sold, and upon this sale the bonds secured by the mortgage described in the bill of complaint in this cause will be received in part payment of the proceeds of such sale in the proportion which

each bond, at the principal thereof for the amount thereof according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

DARIUS C. JACKSON,
U. S. Marshal.

CARY & PRATT,
Solicitors for Complainants.

Milwaukee, January 17, 1863.
(Filed April 23, 1863.)

And afterwards, on the 24th day of April, 1864, came Charles Howard, Lawrence G. Graham, and Donald D. Scott, judgment creditors of the La Crosse & Milwaukee Railroad Company, by Mr. Hubbell, their counsel, and presented their joint petition in writing herein filed, praying an order to stay or postpone the sale under the decree in this cause, for the reasons therein set forth, as follows, to wit:

978 *Petition of Howard to stay sale.*

District court of the United States, District of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPARD KNAPP, trustees, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, SEBRA HOWARD, and others. } Foreclosure suit.

To the judge of the district court of the United States for the district of Wisconsin:

Your petitioners, Charles Howard, a citizen and resident of the State of New York, and Lawrence G. Graham and Donald D. Scott, aliens and subjects of Victoria, Queen of Great Britain and Ireland, respectfully represent that Sebra Howard, who is named as a defendant in the above-entitled action, and who was a citizen and resident of the State of Ohio, departed this life at Cleveland, in said State, on or about the 19th day of March, 1862; that in his lifetime and on or about the 28th day of November, 1859, in the district court of the United States for the district of Wisconsin, said Sebre Howard recovered a judgment against the La Crosse and Milwaukee Railroad Company, the principal defendant in the above-entitled action, for the sum of sixteen thousand three hundred and seventy-nine
979 dollars and eighty-six cents damages and costs, which judgment duly entered, enrolled and recorded, still remains unpaid, unrecovered and unsatisfied, as by the records of said district court and of this court, reference being thereto had, will more fully appear; that afterwards and in the lifetime of said Sebre Howard, for a valuable consideration, the said Sebre Howard sold, assigned and transferred the said judgment, and all his right, title, and interest in and

to the same, to your petitioner, Charles Howard, who thereupon became and now is the lawful and sole owner of said judgment.

Your petitioners further represent, that in the month of December, 1857, the said La Crosse and Milwaukee Railroad Company, being justly indebted to your petitioners, Lawrence D. Graham and Donald G. Scott, who are copartners, and who are also parties defendant to said action, the said Graham & Scott commenced an action for the recovery of said indebtedness in the district court of the United States for the district of Wisconsin against said La Crosse and Milwaukee Railroad Company, and caused said company to be duly served with process therein.

And that such proceedings were thereupon had, that, on the 11th day of January, 1860, in the said district court, before the judge thereof, the said Graham & Scott recovered a judgment against said railroad company for the sum of forty-four thousand four hundred and thirteen dollars and eighteen cents, which judgment, duly entered and docketed on the day and year aforesaid, still remains unre-
980 versed, unpaid, and unsatisfied, as by the record thereof remaining in said district court, reference being thereto had, will appear.

Your petitioners further represent, that they are advised and believe, and therefore claim, that the said two judgments constitute equitable liens upon all the real estate, buildings, fixtures, rolling stock, and other property of said La Crosse and Milwaukee Railroad Company, recognized in law as real estate subject only to the lien of such *bona fide* and lawful mortgages and judgments as are prior in date to the said judgments, and that they are entitled to be paid out of the said property, or out of the net proceeds arising from the use and operation thereof, whenever such prior *bona fide* and lawful liens shall have been satisfied.

Your petitioners further represent, that, by an act of Congress entitled "An act granting a portion of the public lands to the State of Wisconsin to aid in the construction of railroads," approved June 3, 1856, and by an act of the legislature of the State of Wisconsin entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company," approved October 11, 1856, the said railroad company became contingently entitled to have and receive from the general government, through the State of Wisconsin, as its trustee, a conveyance of lands to the amount of about one million of acres, which lands, at the time of the execution of the mortgage or trust deed, for the foreclosure of which the above-entitled ac-
981 tion is brought, were estimated by said railroad company to be of the value of seventeen millions of dollars; that by the said act of the legislature of the State of Wisconsin it was provided "that the title to said lands shall vest in the La Crosse and Milwaukee Railroad Company in the manner following, that is to say, whenever twenty continuous miles of the said road shall have been completed so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such road are completed as

aforesaid, then the title to two hundred and forty sections of said land vests in the said La Crosse and Milwaukee Railroad Company; and when a second twenty continuous miles of said road shall have been completed so as to admit of running regular trains on the same, the governor shall certify as above, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company; and so from time to time until said roads are completed. And it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit of running of regular trains of cars over the same.

982 And the governor of the State shall, in his official capacity and in behalf of the State and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall, by virtue of the provisions of this chapter, be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled; provided that said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same; and soon from time to time, so that the sales by said company shall never exceed six sections of land for every mile of said road so completed;" and that in and by said act it was further provided that "the locations and designations of the route and line of the said roads should be made by the said La Crosse and Milwaukee Railroad Company, and the same shall, from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress herein mentioned shall be made by such agents as may be appointed by the governor of this State."

Your petitioners further represent, upon information and belief, that soon after the passage of said act the said line of said company's railway was duly located and designated from the city of Madison to Portage City, and from Portage City towards the St. Croix river

983 or lake, a distance of over 200 miles in all, and over 100 miles was put under contract; and the same was duly reported to the governor of the State, and through the United States government withdrew from market and from private entry and sale all the lands lying along said designated line of road which were liable to be selected for said company under and in pursuance of said acts; and said lands ever since that time have been, and still are, reserved from sale by the government to comply with the provisions and purposes of said acts; and that during the years 1857 and 1858 over sixty continuous miles of the said railroad were completed by said company, so as to admit of running of regular trains on the same from Portage City westward; and the fact was duly reported by said company to the governor of this State; and the said company thereupon and thereby became entitled to have such fact certified by the governor of the State to the Secretary of the Interior of the United States in pursuance of said acts, and to have the title to four hundred and eighty sections of said granted lands vest in the said La Crosse and Milwaukee Railroad Company, and to have a conveyance of the same.

And your petitioner further represents, that soon after the completion of the first 40 miles of the said line of road, as they are
983 informed and believe, the fact of two sections of 20 continuous miles of said road were completed so as to admit of running regular trains on the same was duly certified by the governor of the State of Wisconsin to the Secretary of the Interior of the United States in conformity with said acts; and thereupon, and thereby, the title to three hundred and sixty sections of said granted lands vested in said railroad company, pursuant to the provisions of said acts; but your petitioners are informed and believe that the said La Crosse and Milwaukee Railroad Company has hitherto neglected or failed to procure from the governor of the State the requisite certificate of the Secretary of the Interior to cause or procure the title to any more of said lands to vest in said company under the provisions of said acts, and in consequence thereof, the said company has not yet acquired, as it might and ought to have done, the title to an additional 120 sections, part and parcel of said lands. Your petitioners are informed and believe that no patent for any part or portion of said lands has been obtained from the State of Wisconsin, and that although commissioners were duly appointed by the governor for that purpose, no part or portion of said lands has been selected, and that whatever may be the equitable title of the said company to 360 sections, or any part or portion of said granted
984 lands, they have not been selected, designated or described; and your petitioners are advised and believe that, by reason of the facts aforesaid, the said railroad company, and the said complainants, as trustees or mortgagees, under the mortgage sought to be foreclosed in said action, have not acquired or perfected any right or title to any of said lands which this court is competent by its decree to convey to any purchaser, or of which it can give any purchaser possession under its decree in the said action; and that, therefore, any sale which may be made or attempt to be made under said decree, without further action of this court, or of the said complainants, to procure a selection of said lands and to perfect the title thereto in said company under the said acts will be absolutely valueless to the purchaser, and wholly unproductive to the complainants. But your petitioners are advised and believe that such sale, if made under the provisions of said trust deed or mortgage and the decree of this court, will cut off and distinguish all the equitable claim, right and interest of the said La Crosse and Milwaukie Railroad Company, and of your petitioners and all other creditors thereof whose lien of said trust deed or mortgage, in and to all the lands so aforesaid granted to the La Crosse and Milwaukie Railroad Company.

985 Your petitioners further represent, upon information and belief, that by the proper proceedings on the part of this court and of the said complainant's trustees, four hundred and eighty sections of the said granted lands may be caused to be selected, allotted, and designated by *meteres* and bounds, and a patent or patents therefor to the said La Crosse and Milwaukee Railroad Company may be obtained from the State of Wisconsin, and thereby the title to the same be

made to inure to the benefit of the said trustees under their said trust deed or mortgage; and that the same, being thus made capable of being sold in distinct lots and parcels, will bring a very large sum of money, and, as your petitioners believe, as much as five hundred to eight hundred thousand dollars.

Your petitioners insist that, inasmuch as it is provided in and by the said act of the legislature of the State of Wisconsin "that said land shall be exclusively applied in the construction of that road, for which it was granted and selected, and shall be disposed of only as the work progresses," and "that said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on from time to time, so that the sales of land by said company shall never ex-
986 ceed six sections of land for every mile of said road so completed," it was not the policy of the legislature or the intention of said trust deed or mortgage, of which said act forms a part, to authorize the sale of any part of said lands until the title of the company thereto should be perfected in conformity to said act, and much less was it the policy or design of the legislature to authorize said company, by the instrumentality of a mortgage, to extinguish its entire right and claim to the said granted lands without completing a single mile of road or acquiring title to a single section of said lands.

Your petitioners further represent, that they are informed and believe that the track and line of said railroad and the real estate and rolling stock conveyed by said trust deed or mortgage are wholly inadequate, without including said granted lands, to pay the principal sums or interest secured or intended to be secured thereby; that said granted lands are a collateral security available to the complainants in said action, but not available to any other creditors of said railroad company; and that by the terms of said trust deed, as well as by the general principles of equity, the said complainants are forced to resort first to said collateral security for the payment of said mortgage debt, and to make the same productive and available as far as prac-
987 ticable, before resorting to the principal security, upon which the other creditors of the company must rely solely for the payment of their claims.

Your petitioners further represent that, under and by virtue of the decree made and entered in the said action on the 16th day of January, 1862, the marshal of the United States for the district of Wisconsin has advertised for sale at public auction, at the post office in the city and county of Milwaukee, on the 27th day of April, 1863, all and singular the lands granted, or intended to be granted, to said La Crosse and Milwaukee Railroad Company, under and by virtue "of the aforesaid act of Congress, approved June 3d, 1856," and under or by virtue of the aforesaid act of the legislature of the State of Wisconsin, approved October 11th, 1856; together with the track or line of said company's railroad, extending from Portage City to the city of La Crosse, and all the fixtures, real estate, and rolling stock belonging or appurtenant to said track or line, and conveyed or intended to be conveyed by said trust deed or mortgage, the lands

mentioned as granted by the United States to be sold first; which sale your petitioners are informed and believe the said complainants and the said marshal intend to make, or cause to be made, at the said time and place, and, unless restrained by the order of this court, they believe and fear said sale will then and there be made.

988 Your petitioners further represent that, as they are advised and verily believe, the said sale, or pretended sale, of the lands so as aforesaid granted in and by the aforesaid acts will not produce any more than the bid of a merely nominal sum, and will not be available to the purchaser, if one is found, for any practical or valuable purpose; but that it will effect, in form at least, a legal and absolute transfer and extinguishment of all the right and claim of the said La Crosse and Milwaukee Railroad Company in and to the whole of said granted lands, under the acts aforesaid, and will cause an irreparable injury to the creditors of said company, including your petitioners, and also the stockholders and all persons interested in the appropriation of said lands to the construction of the railroads designated in and authorized by the aforesaid acts; and will lead to innumerable and vexatious suits and interminable litigation in regard to the title, control, and future disposition of said granted lands.

Your petitioners further represent, upon information and belief, that the line and track of said company's road from Portage City to Tomah, a distance of sixty-one miles, was constructed in part out of the proceeds of the bonds, secured by said trust deed or mortgage, and for the payment of which said sale of lands is to be made; but that a large part of the four millions dollars of bonds, secured by said trust deed, and to pay which said sale is to be made, and

989 especially the 1,500 highest numbered bonds, were applied to other purposes, and to the construction of other lines of road than such as are authorized by the aforesaid acts of Congress and of the legislature of the State of Wisconsin; that it nowhere appears in and by the complainants' bill of complaint, or by the evidence in the case, how much money or what part of the proceeds of said bonds was used and applied in conformity to the said acts, or what part or portion of said bonds became a legal and proper lien and charge upon said granted lands; and your petitioners are advised and believe, that a sale of the whole of said granted lands, or of the whole right and title of the said company in and to the same, for the payment of said four millions of bonds indiscriminately, will be a palpable violation of the spirit and terms of the said acts, and unjust to your petitioners as creditors of said company.

Your petitioners therefore pray that an order may be made staying or postponing the said contemplated sale, until the title to such portion of said lands as the said company equitably ought to have conveyed to it, by reason of its having completed sixty or more continuous miles of its road, shall have been procured from the State and made available to the said complainants, and until it shall be ascertained for what portion of said mortgage debt said lands are liable, and what lots, portions, and parcels of said land can or

990 may be sold to pay the same, or that your petitioners may have such other or such further relief in the premises as may be just and equitable.

CHARLES HOWARD,
By his Attorney in fact,
LEVI HUBBELL.
GRAHAM & SCOTT.

STATE OF WISCONSIN, *District of Wisconsin, ss:*

Lawrence G. Graham, one of the petitioners named in the foregoing petition, and a resident of said State of Wisconsin, being duly sworn, deposes and says that he has heard said petition read and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes said petition to be true.

LAWRENCE G. GRAHAM.

Sworn to and subscribed before me this 22d of April, 1863.
FRANCIS BLOODGOOD,
U. S. Circuit Court Commissioner.

And afterwards, on the 27th day of April, 1863, came the marshal, and filed his report of sale as follows, viz:

991 *Marshal's report of sale of the western division.*

In the district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPERD KNAPP, trustees, complainant,
vs.
LA CROSSE and MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. } In chancery.

Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shephard, C. P.
992 Williams, Orville Oddie, John Pemberton, Niles Higgenbetham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, and John Nicholson, defendants.

I, Darius C. Jackson, marshal for the district of Wisconsin, hereby report that, in pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, as directed in said decree, I gave notice of the time and place of sale by publication once in each week for three months, in the La Crosse Republican, a newspaper published in the city of La Crosse, and in the Evening Post, a newspaper published in the city of New York, (a printed copy of said notices and the affidavits of publication are hereto annexed and referred to as a part of this report,) and I did at the time and place mentioned in said printed notice, to wit, on the 25th day of April, in the year 1863, at two o'clock, at the post office in the city of Milwaukee, then and there first offer for sale, and sell at public auction, the premises described in said decree as follows, to wit:

"All and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company under and by virtue of an act of Congress of the United States, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, A. D. 1856, and under or by virtue of an act of the legislature of the State of Wisconsin, approved Oct. 11, A. D. 1856, entitled 'An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, A. D. 1857, so far as the said lands pertain or are applicable to the construction of said road from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of lands, together with all the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, situate, lying, and being in the State of Wisconsin, which were bid off by William Wallace Pratt and William H. White, for the sum of one hundred and twenty-five thousand dollars, ($125,000,) they being the highest and best bidder, and that being the highest and best bid made for the premises described.

993 And I there offered for sale and sold in like manner the balance of the premises and property described in said decree, as follows, to wit: "All and singular the several tracts, pieces, or parcels of land which constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships 25 and 31, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines and other rolling stock, and all the other equipments, of every kind and description, which have been procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been procured for or used in connexion with said roads or either of them, and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description, relating to said roads, (of said rolling stock forty box-cars, numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road covered by the aforesaid mortgage bear to the balance or other end of said road, was sold free and clear of all lien incumberance, but the remainder of the above-mentioned rolling stock was sold subject to the lien of mortgages prior in date to the mortgage above mentioned, given by said La Crosse and Milwaukee Railroad Company,) together with the tools, rents, and income to be had or levied therefrom, and all corporate and other rights, franchises, or privileges of the said company of, in, and to, or concerning the same, being all the property, real or personal, described in the said mortgage, (except the lands therein mentioned, granted by Congress to the State of Wisconsin;) and all and singular the privileges, hereditaments, appurtenances to the same, belonging, or in any wise appertaining, situate, lying, and being in the State of Wisconsin, which was bid off by William
994 Wallace Pratt and William H. White, for the sum of two million six hundred and seventy-five thousand dollars, ($2,675,000,) they being the highest and best bidders, and that being the highest and best bid made for the premises last above described.

And I further report that said purchasers have complied with both of their said bids, and have paid to me the sum of two million eight hundred thousand dollars, as follows:

Said sum is $1,001,932 on each dollar of the principal of the bonds secured by the said mortgage, as fixed by the decree in this cause, said purchasers have paid twenty-seven hundred and eight thousand six hundred and twenty-three 8-100 dollars, ($2,708,623 08,) in bonds

secured by said mortgages as follows: Nineteen hundred and thirty-nine (1,939) of said bonds, numbered between 1 and 1,991, inclusive, for one thousand dollars each; eighteen hundred and sixty-five (1,865) of said bonds for one thousand dollars each, numbered between 1,992 and 3,950, inclusive, and ninety-two bonds for five hundred dollars each, numbered between 1 and 100, inclusive, and ninety-one thousand three hundred and seventy-six dollars and twenty-two cents ($91,396 22) in cash, all of which amounts to $1,001,932 on the dollar of the principal of all the bonds outstanding, and secured said mortgage.

DARIUS C. JACKSON, *U. S. Marshal.*
By W. S. JACKSON, *Deputy.*

995 EXHIBIT No. —.

STATE OF WISCONSIN,
Milwaukee county, ss:

I, Charles Seymour, of the city of La Crosse, being duly sworn on oath, say that the La Crosse Tribune and Weekly Republican is a newspaper printed and published in the city of La Crosse, in said county of La Crosse, and has general circulation in said county of La Crosse. That affiant is one of the printers and publishers of said newspaper, and that a notice of which—the annexed is a copy—was published in said newspaper once in each week for three successive months, commencing January 20, A. D. 1863, and ending April 23, A. D. 1863.

C. SEYMOUR.

Subscribed and sworn to before me this 27th day of April, A. D. 1863.
ALFRED L. CARY,
Notary Public, Milwaukee county, Wisconsin.

United States Marshal sale.

District court of the United States, district of Wisconsin.—In equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees,
vs.
LA CROSSE & MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel
996 D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt R. Freeman, Ephraim Mariner, Thomas Turton, John Lercomb, Sebastain Knetgger, Frederick Lind, Edward H. Broadhead, Joshua Hathaway, William Gemmell Charles Quentin, August Lanthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee & Minnesota Railroad Company, Moses M. Davis, James Wolstenholm, Guy Tracy, Horace Galpen, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz,

William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Runi Martin, R. J. Burton, D. M. Corbit, D. Farnsworth, Harvey Terry, James I. Day, W. Catlin, Bruce & Young, John M. Tuft, Jonathan P. Hopper, D. S. Kingore, Noah Sturtevant, William H. Fessenden, John L. Sutherland, E. Haskell Derby, Frederick Levick, Charles Shepard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higinbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, T. F. Bergen, John J. Vanderbilt, G. S. Boardman, and John Nicholson.

In pursuance and by virtue of a decree made by the district court of the United States, for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, in the above entitled cause, I shall
997 sell, at public auction, at the post office, in the city and county of Milwaukee, in said district, on the twenty-fifth (25th) day of April, A. D. 1863, at 2 o'clock in the afternoon, the following described mortgaged property, to wit: All and singular, the several tracts, pieces, or parcels of land which now are, or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute, or may hereafter constitute or be a part of the roads of said La Crosse and Milwaukee Railroad Company from Madison, by way of Portage City to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse, and also all and singular, the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all other improvements on or pertaining to said roads, whether now built, or built or made hereafter, and also all and singular, the locomotives, engines, and other rolling stock, and all the equipments of every kind and description, which have already been or may hereafter be procured for or used on said roads, or either of them, and all the material, tools, implements, utensils, and other personal property which have been, or may hereafter be procured for or used
998 in connexion with said roads, or either of them, and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description relating to said roads."

Also, "all and singular, the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company under and by virtue of an act of the Congress of the United States, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State, approved June 3d, 1856, and under or by virtue of an act of the Legislature of the State of Wisconsin, approved Octobor 11th, A. D. 1856, entitled 'An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix

river or lake, estimated to be about one million of acres of lands, together with all and singular, the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate above mentioned and described; the rolling stock hereinbefore
999 mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, A. D. 1856, except forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408; and except such proportion or share of said rolling stock, purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad Company hereinbefore mentioned and described, bears to the balance or other end of said road since the appointment of the receiver, which said forty box cars and said proportion of rolling stock purchased by the receiver are to be sold free and clear of any incumbrance whatever.

The lands hereinbefore mentioned as granted by the United States will be first sold, and if a sufficient sum shall not be realized therefrom to pay the amount adjudged to be due to the complainants for interest, together with costs, then the balance of the mortgaged property hereinbefore mentioned and described will be sold; and upon this sale the bonds secured by the mortgage described in the
1000 bill of complaint in this cause will be received in part payment of the proceeds of such sale, in the proportion which each bond, at the principal thereof for the amount thereof, according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

DARIUS C. JACKSON,
U. S. Marshal.
CARY & PRATT,
Solicitors for Complainants.

Milwaukee, January 17, 1863.

CITY AND COUNTY OF NEW YORK, *ss:*

Henry Dithmar, of the city of New York, being duly sworn, says that he is foreman in the office of the Evening Post, a daily paper printed and published in the city of New York, and that the notice of which the annexed is a printed copy has been regularly published in the said Evening Post once in each week for thirteen weeks successively, commencing on the 21st day of January, 1863.

HENRY DITHMAR.

Sworn before me this 25th day of April, 1863.

JOHN BUTCHER,
Commissioner of Deeds for the State of Wisconsin, Residing in the city, county, and State of New York.

As witness my hand and official seal this 25th day of April, 1863.
[SEAL.] JOHN BUTCHER.

1001 Sworn to before me this 25th day of April, A. D. 1863.
KENNETH G. WHITE,
U. S. Commissioner, duly appointed by the circuit court of the U. S. for the southern district of New York.

United States Marshal sale.

District court of the United States, district of Wisconsin.—In equity.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,

against

LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Lercomb, Sebastian Knetzger, Frederick Lind, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Lauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles
1002 F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Runi Martin, R. J. Burton, D. M. Corbit, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Tuft, Jonathan P. Hopper, D. S. Kingore, Noah Sturtevant, William H. Fessenden, John L. Sutherland, E. Haskell Derby, Frederick Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higinbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, T. F. Bergen, John J. Vanderbilt, G. S. Boardman, and John Nicholson.

In pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, in the above-entitled cause, I shall sell at public auction, at the post office in the city and county of Milwaukee, in said district, on the 25th day of April, A. D. 1863, at two o'clock in the afternoon, the following described mortgaged property, to wit: "All and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all other land and real estate which now constitute or may hereafter constitute or be a part of the roads of said La Crosse

and Milwaukee Railroad Company, from Madison, by way
1003 of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse, and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depot, and other buildings, and all other improvements on or pertaining to said roads, whether now built or built and made hereafter, and also all and singular the locomotive engines and other rolling stock, and all the equipments of every kind and description which have already been or may hereafter be procured for or used on the said roads or either of them, and all the materials, tools, implements, utensils, and other personal property whichhave been or may hereafter be procured for, or used in connexion with said roads or either of them, and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description relating to said roads.

Also "all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company under and by virtue of an act of the Congress of the United States, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3d, 1856,
1004 and under or by virtue of an act of the legislature of the State of Wisconsin, approved Octoher 11th, A. D. 1856, entitled 'An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate above mentioned and described.

"The rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, A. D. 1856, except forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408; and except such proportion or share of said rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad
1005 Company hereinbefore mentioned and described bears to the balance or other end of said road since the appointment of the receiver, which said forty box cars and said proportion of rolling stock purchased by the receiver are to be sold free and clear of any incumbrance whatever.

The lands hereinbefore mentioned as granted by the United States

will be first sold, and if a sufficient sum shall not be realized therefrom to pay the amount adjudged to be due to the complainants for interest, together with costs, then the balance of the mortgaged property hereinbefore mentioned and described will be sold, and upon this sale the bonds secured by the mortgage described in the bill of complaint in this cause will be received in part payment of the proceeds of such sale in the proportion which each bond, at the principal thereof for the amount thereof, according to this decree (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars) bears to the amount of said sale.

DARIUS C. JACKSON,
United States Marshal.
CAREY & PRATT,
Solicitors for Complainants.

Milwaukee, January 17, 1863.

1006 Whereupon it is ordered that the said report will be acted on by the court on Monday next, and if exceptions are made to said report, that copies thereof be served on the complainants' counsel by Friday next.

And afterwards, on the first day of May, 1863, came the defendants, Francis Vose, by his solicitors, Messrs. Ryan and McGregor, and filed his affidavit and exhibits as follows:

1007 In the district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPERD KNAPP *vs.* LA CROSSE and MILWAUKEE RAILROAD COMPANY, *et als.*	Foreclosure.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

Francis Vose, of the city of New York, in the State of New York, being duly sworn, deposes and says that he is the owner of seventeen bonds for the aggregate principal sum of seventeen thousand dollars, secured by the mortgage made by the La Crosse and Milwaukee Railroad Company to the complainants in this cause, mentioned in the pleadings and decree in the cause; that Isaac M. Millbank and Robert W. Millbank, of said city and State of New York, copartners under the name of I. and R. Millbank, are the owners of nineteen of the said bonds, secured by the said mortgage for the aggregate principal sum of nineteen thousand dollars, and of two of the said bonds for
1008 the aggregate principal sum of one thousand dollars; that the defendant, Orville Oddie, and Christopher R. St. George, of the said city and State of New York, copartners under the name of Oddie and St. George, are the owners of ninety-three of the said

bonds so secured for the aggregate principal sum of ninety-three thousand dollars; and that the defendant, William Crawshay, of the city of London, in the kingdom of Great Britain, is the owner of one hundred and three of the said bonds so secured for the aggregate sum of one hundred and three thousand dollars.

And this deponent further says, that in anticipation of the decree in this cause, and of the sale of the mortgaged premises thereunder, the holders of a large amount of the bonds of the said La Crosse and Milwaukee Railroad Company, secured by the said mortgage, for the purpose of securing their own rights and interests in the premises by purchasing the said mortgaged premises at such sale, and of reorganizing in concert with the owners and creditors of the eastern division of the railroad of the said La Crosse and Milwaukee Railroad Company, if practicable, formed a scheme or plan amongst them-
1009 selves, and on or about the third day of September, 1861, reduced to writing a sketch or synopsis of such scheme or plan, in the words and figures stated and set forth in that behalf, within marks of quotation in folios 40, 41, 42, 43, 44, and 45 of the exhibit hereunto annexed, being an exemplification of an action pending in the supreme court for the city and county of New York, in the State of New York, wherein the said William Crawshay, Isaac M. Millbank, Robert W. Millbank, Orville Oddie, Christopher R. St. George, and this deponent are plaintiffs, and Isaac Seymour, Horace Galpin, Nathaniel A. Coudrey, Frederick P. James, William Gould, David M. Hughes, Russell Sage, Selah Chamberlain, and the complainants in this cause are defendants.

And this deponent further says, that on or about the first day of October, 1861, the parties to the said scheme or plan held a meeting in the said city of New York for the purpose of carrying out the said scheme or plan, and at such meeting duly chose and appointed the said Isaac Seymour, Horace Galpin, Frederick P. James, William Gould, David M. Hughes, this deponent, and one Benjamin F. Dawson, their trustees and attorneys to carry the said scheme into effect; and thereupon, afterwards, on the third day of October,
1011 1861, directed and caused to be executed an agreement in writing, for the purpose of carrying out the said scheme or plan in the words and figures stated and set forth in the folios 125 to 162 of the said exhibit hereunto annexed.

And this deponent further says, that on or about the 8th day of May, 1862, the said Benjamin F. Dawson resigned his office as one of the said trustees and attornies under the said agreement, and that one George Smith was afterwards appointed in his place, and that the said George Smith subsequently resigned his office as one of the said trustees and attornies; and that on or about the 15th day of July, 1862, the said Nathaniel A. Coudrey was appointed one of the said trustees and attornies in the place of said George Smith, and that the said Isaac Seymour, Horace Galpin, Frederick P. James, William Gould, David M. Hughes, Nathaniel A. Coudrey, and this deponent have all acted as trustees and attorneys under the said agreement; have none of them resigned or been by any competent authority re-

moved from their offices as such trustees and attorneys, and now are the same trustees and attorneys, under the same agreement.

1012 And this deponent further says, that immediately after the execution of the said agreement, the said trustees and attorneys caused the said scheme and plan and the said agreement to be printed and distributed amongst the bondholders and other creditors of the La Crosse and Milwaukee Railroad Company interested therein, and thereby and by circulars and advertisements and other means made the said scheme and plan and agreement generally known to the holders of bonds, secured by the said mortgage, and to other persons interested in the premises, and invited all the holders of the bonds so secured to join in the said scheme or plan and become parties to the said agreement and to deliver their bonds to the said trustees and attorneys to be used in furtherance of the said scheme or plan and in the purchase of the mortgaged premises under the decree in this cause; and that the holders of a large majority of said bonds, relying upon the good faith of the said trustees and attorneys in honestly and faithfully carrying out the said scheme or plan, and in executing their trust declared and defined by the said agreement, did accordingly give in their adherence to the said scheme and plan and become parties thereto for the purpose of purchasing the said

1013 mortgaged premises and reorganizing under and as set forth in the said agreement, and did surrender and deliver to the said trustees and attorneys the bonds secured by the said mortgage held by them severally and respectively, to an aggregate amount of principal exceeding three million eight hundred thousand dollars, and that amongst others the said William Crawshay, Isaac M. Millbank, Robert W. Millbank, Orville Oddie, Christopher R. St. George, and this deponent so became parties to the said scheme, plan, and agreement, and so surrendered and delivered up to the said trustees and attorneys their bonds secured by the said mortgage to the amounts and numbers heretofore stated to be held by them respectively; and that the said trustees and attorneys have not surrendered their said trust or delivered back to the owners thereof any of the bonds so surrendered and delivered up to them, but have continued to hold the same, including those of said William Crawshay, Isaac M. Millbank, Robert W. Millbank, Orville Oddie, Christopher R. St. George, and this deponent, subject to the said trust and as such trustees and attorneys.

1014 And this deponent further says that he has made a careful examination of the bonds secured by the said mortgage paid to the marshal of the United States, by or in behalf of William Wallace Pratt and William H. White, as purchasers at the said marshal sale, made on the 25th day of April, 1863, as reported to this court by said marshal in his report of the said sale; and that he knows that a great majority in number and amount thereof, and that he has reason to believe, and does verily believe, that the whole thereof so delivered up and surrendered by the holders thereof to the said trustees and attorneys under and subject to the said trust.

And the deponent further says that it was the habit and duty of

the said trustees and attorneys to issue to the persons so surrendering their bonds to them a certificate thereof, and to stamp in ink and upon each of the bonds so surrendered this memorandum: "Surrendered to trustees of creditors against certificate No. —;" and that all of the bonds so paid to the marshal are so stamped except about twenty-seven, and that exact number, as deponent verily believes.

And this deponent further says that the forms of certifi-
1015 cates so given by the said trustees and attorneys are correctly stated and set forth in folios 163 to 202 of the said exhibit hereto annexed, varying only with the name of the owner, and numbers, classification, and amounts of the bonds represented, and the corresponding new securities; and that the said Isaac Seymour has been and is the chairman, and the said Nathaniel A. Coudrey has been and is the secretary of the said attorneys and trustees.

And this deponent further says that he has not with him, and has no present means of ascertaining, the numbers of said bonds so owned by him and surrendered to the said trustees and attorneys; that he is acquainted with the numbers of said bonds so owned and surrendered, respectively, by the said William Crawshay, Isaac M. Millbank, Robert W. Millbank, Orville Oddie, and Christopher R. St. George, and found them amongst the bonds paid to the marshal as aforesaid, and that he has no doubt, but fully believes, that his own said bonds are amongst those so paid to the said marshal; and that the said William Crawshay, Isaac M. Milbank, Robert W. Millbank, Orville Oddie,
Christopher R. St. George, and this deponent still own the
1016 certificates issued to them for their said bonds by the said trustees and attorneys.

And this deponent further says, that if he had suspected or supposed, and he is informed and believes that if the said William Crawshay, Isaac M. Millbank, Robert W. Millbank, Orville Oddie, Christopher R. St. George, and many others of the holders of said bonds, secured by said mortgage, amounting to a large majority in amount thereof, had suspected or supposed that the said trustees and attorneys would or could have deviated from the said scheme or plan as herebefore stated, he and they would have severally refused to have become parties thereof.

And this deponent further says that the complaint in the said action in the said supreme court, for the city and county of New York, and his two several affidavits in the said action contained in the said exhibit, hereto annexed, are true, to the best of his knowledge and belief, as the same appear therein to have been severally sworn to by him; that the said action is still pending and undetermined, and that the orders of the said supreme court, set forth in the said exhibit, and bearing date respectively the 23d day of December, 1862, the
21st day of January, 1863; and the 23d day of March, 1863,
1017 are severally in full force and effect, except so far as the subsequent orders rescind or modify the prior orders.

And this deponent further says that the said William Wallace Pratt, one of the purchasers of the mortgaged premises stated in the said marshal's said report of sale, is one of the firm of Cary &

Pratt, the solicitors of the complainants in this cause, and that the said William H. White, the other of the said purchasers, is a relative or connexion of the said David M. Hughes, one of the said trustees and attornies, as deponent is informed and believes, and that neither of them are holders of the said bonds secured by the said mortgage, or parties to the said scheme and plan and agreement, to the knowledge or belief of this deponent.

And this deponent further says that he is informed and believes that the payment of money made by or in behalf of the said William Wallace Pratt and William H. White to the said marshal, as reported by him in his said report, was not made with the money of the said Pratt and White, or either of them, but was made with money raised or advanced by the said trustees and attorneys other than this deponent, or some of them, as such trustees and attorneys, or chargeable to the holders of the said bonds who are parties to the said
1018 scheme, plan, and agreement.

And this deponent further says, that the two bids at the said sale in the names of the said William Wallace Pratt and William H. White, as reported by the said marshal, were made by John W. Cary, esquire, one of the complainants' solicitors, who attended the said sale as solicitor for the complainants, and, under the direction and authority of the said marshal, announced the terms of such sale.

And this deponent further says, that the said Frederick P. James, David M. Hughes, Nathaniel A. Coudrey, and Horace Galpin attended and were present at the said sale, and that several of them made bids thereat prior to and under the said bids so made by the said John W. Cary; and this deponent has reason to believe, and does believe, that such bids were prearranged by and between the said Isaac Seymour, Horace Galpin, Nathaniel A. Coudrey, Frederick P. James, David M. Hughes, John W. Cary, William Wallace Pratt, William H. White, or by some of them, with the assent of others of them, express or unexpressed, and with the assent of the said William Gould, express or unexpressed, and that except one bid for the railroad and appurtenances, which deponent has reason to
1019 believe was not made in good faith, no bid was made at such sale except under a prearrangement or understanding of such parties.

And this deponent further says, that soon after the said sale and on the same day, the said William Wallace Pratt and William H. White departed together for some place unknown, as deponent is informed and believes, and for the purpose of avoiding the jurisdiction of this and other courts, federal and State, having jurisdiction in this State, in relation to their said purchase, until the same should be confirmed and their title thereunder divested, as this deponent has reason to believe and does believe, and have not since returned or appeared here, as this deponent is informed and believes.

And this deponent further says, that he is informed and believes that neither the said William Wallace Pratt, neither said William H. White, has any considerable means, and that both together are utterly irresponsible for any considerable amount of the said purchase.

And this deponent further says, that he was present at the said sale, and then was, and always had been before and now is, ready and willing to act with his co-trustees and attorneys in the execution of said trust.

1020 And this deponent further says, that prior to the said sale, and pending the advertisement thereof by the said marshal, the said Isaac Seymour, Nathaniel A. Coudrey, Horace Galpin, William Gould, David M. Hughes, and Frederick P. James, acting through their counsel, sought to have themselves and Russel Sage, George Smith, Alexander Mitchell, Hans Crocker, Asahel Finch, George W. Rogers, and Selah Chamberlain incorporated by the legislature of the State of Wisconsin by two several acts of incorporation, copies of which are hereto annexed, marked "A" and "B," for the purpose of avoiding the effect and jurisdiction of the said action in the said supreme court for the said city and county of New York, and of avoiding the said trust of the said trustees and attorneys, and of escaping their responsibilities to their "cestui que trust," as this deponent is informed and believes. And this deponent says that he has read a letter of the said Nathaniel A. Coudrey, dated the 6th day of March, 1863, in which the said Nathaniel A. Coudrey says: "I was to-day told that he was displeased at some proposed legislation designed to enable us to organize a corporation at once. I regret to hear this, and think if I could have seen him I could have explained our intentions so that it would have been quite satis-

1021 factory to us and to him and to his associates. It must be evident to him and to yourself that we never, on account of strict agreement among our land grant bondholders, can be enabled to make any settle with him and others different from that proposed in our scheme, until we are relieved from the obligations of that unfortunate agreement by becoming a corporation."

And this deponent further says, that he has reason to believe, and does believe, that the said trustees and attorneys, other than this deponent or some of them, procured the said William Wallace Pratt and William H. White to make the said bids and the said purchase, and furnished to them the bonds and money by them paid to the marshal, or the same to the marshal on their behalf.

And this deponent further says, that he has reason to believe, and does believe, that the said trustees and attorneys, other than this deponent or some of them, so procured the said William Wallace Pratt and William H. White to make the same bids and the said purchase, and furnished to them the bonds and money therefor, partly for the purpose of making it appear that

1022 the said purchase was not made by a party to this cause, and partly for the purpose of avoiding the jurisdiction and effect of the said action so depending in said supreme court for the city and county of New York, and of substantively violating the injunction and orders made therein without personal liability therefor, and partly for the purpose of violating and defeating the terms of the said trust under which they held the said bonds so paid to the said marshal, and partly for the purpose of carrying out and executing

the pretended amendments to the said agreement mentioned in the said complaint in the injunctional orders contained in the said exhibit hereunto annexed and particularly stated in folios 224 to 233 of said exhibit.

And the deponent further says that he is informed and believes that some of the said trustees and attorneys and their associates expect to make inordinate profits out of the operations contained in the said pretended amendments; but the deponent says that he is thoroughly conversant with the affairs of the La Crosse and Milwaukee Railroad and with the value of that road, and of the other railroads mentioned in the said pretended amendments, and that he has
1023 no doubt that the value of the bonds secured by the said mortgage will be greatly depreciated by carrying out the said pretended amendments.

And this deponent further says that he has not, and that he is well informed and believes that the said William Crawshay, Isaac M. Millbank, Robert W. Millbank, Orville Oddie, and Christopher R. St. George, and many others of the holders of the said bonds, and he verily believes a large majority of them, have not given any assent to the said purchase of the said William Wallace Pratt and William H. White, or to the diversion of their bonds from the original trust hereinbefore stated.

And this deponent makes the said complaint and his said two affidavits in the said action in the said supreme court for the city and county of New York, contained in the said exhibit hereunto annexed, so far as and as they therein purport to have been sworn to by this deponent, a part of this affidavit in the same manner as if the same were herein restated.

And this deponent further says that he has for several years last past been conversant with the claim or title of the La Crosse
1024 and Milwaukee Railroad Company to the lands appurtenant to their railroad from Portage City to Tomah, under the grants from the United States and the State mentioned in the pleadings and the decree in this cause, and verily believes the same to be worth the sum of five hundred thousand dollars, and that he verily believes that the claim and title of the said La Crosse and Milwaukee Railroad Company to the balance of the said land grant is worth the sum of five hundred thousand dollars.

F. VOSE.

Subscribed and sworn before me, this 1st day of May, 1863.

J. M. MILLER, *Clerk.*

1024½ The people of the State of New York, by the grace of God free and independent, to all whom these presents shall come or may concern, greeting:

Know ye, that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain papers on an appeal from an order granting an injunction there remaining, in the words and figures following, to wit:

[SEAL.]

1028 Supreme court, city and county of New York.

Order of injunction, Dec. 23d, 1862.

WILLIAM CRAWSHAY, ISAAC M. MILBANK, ROBERT W. MILBANK, ORVILLE ODDIE, CHRISTOPHER R. ST. GEORGE, and FRANCIS VOSE
against
ISAAC SEYMOUR, HORACE GALPEN, NATHANIEL A. COWDREY, FREDERICK P. JAMES, WILLIAM GOULD, DAVID M. HUGHES, RUSSELL SAGE, and SELAH CHAMBERLAIN, and GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees.

It appearing satisfactorily to me, by the verified complaint in this action, and the affidavits of Francis Vose and Orville Oddie, that sufficient grounds for an order of injunction exist, I do hereby order that the defendants, Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, William Gould, David M. Hughes, and Russell Sage, and each and every of them, and their attorneys, solicitors, and agents, be and they hereby are enjoined and restrained, until the further order of this court, from taking any further action under the agreement between the assenting creditors of the La

1029 Crosse and Milwaukee Railroad Company for the purchase of the western division of said road, and the organizing a new corporation for the benefit of the purchasers, made October 3, 1861, which is in said complaint mentioned, as trustees or attorneys for the persons who assented or became parties to the said agreement or in any other capacity, and from doing or attempting to do, or directing to be done, any act or proceeding for the confirmation of the sale made by the marshal of the United States for the district of Wisconsin, under the decree of foreclosure made by the circuit court of the United States for the district of Wisconsin, on the thirteenth day of January, 1862, which is also mentioned in said complaint, and from accepting or receiving a deed for the mortgaged premises described in the said decree, either from the said marshal or any other person or persons, and from directing or authorizing any other person or persons to accept or receive the said deed, and from reorganizing, or doing, or performing any act or thing towards reorganizing a new corporation under the said agreement of October 3, 1861, or under any pretended amendments or alterations of the same; and that the said defendants, Greene C. Bronson, James T. Soutter, and Shepherd Knapp, together with their attorneys, solicitors, and agents, be and they hereby are enjoined and restrained, until the further order of this court, from moving for the confirmation of the said sale by the marshal of the United States for the district of Wisconsin, under the decree of foreclosure above mentioned, or entering any order thereupon, and from doing or attempting to do, or directing to be done, any other act or proceeding for, or which shall result in, the confirmation of the said sale under the said decree; and also from doing or attempting to do or directing to be done any act or thing for, or which shall result in, the

delivery of the deed for the said mortgaged premises to the said defendants, Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, William Gould, David M. Hughes, and Russell Sage, or either of them; and I do hereby further order and require that the said defendants in this action and each of them do show cause before one of the justices of this court, at a special term thereof, to be held at chambers in the city hall in the city of New York,
1030 on the fifth day of January next, at 12 o'clock at noon, why the injunction hereby granted should not be continued during the pendency of this action and until the final judgment of this court therein; and in case of disobedience to this order, the said defendants and each of them will be liable to the punishment therefor prescribed by law.

WM. H. LEONARD, *Justice, &c.*

Dated December 23, 1862.

Supreme court, city and county of New York.

Complaint sworn to Dec. 23d, 1862.

WILLIAM CRAWSHAY, ISAAC M. MILBANK, ROBERT W. MILBANK, Orville Oddie, Christopher R. St. George, and Francis Vose

against

ISAAC SEYMOUR, HORACE GALPEN, NATHANIEL A. COWDREY, Frederick P. James, William Gould, David M. Hughes, Russell Sage, and Selah Chamberlain, and Greene C. Bronson, James T. Soutter, and Shep herd Knapp, trustees, &c.

William Crawshay, of London, England, and Isaac M. Milbank, Robert W. Milbank, Orville Oddie, Christopher R. St. George, and Francis Vose, of the city of New York, plaintiffs in this action (as well in their own behalf as in behalf of all other persons who, as holders of land grant bonds of the La Crosse and Milwaukee Railroad Company, or otherwise, are interested under the agreement dated October 3, 1861, hereinafter set forth, and who shall come in and contribute to the expenses of this action, and avail them-
1031 selves of the benefit thereof), by Evarts, Southmayd & Choate, their attorneys, complain of Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, David M. Hughes, all of the city of New York, William Gould, of Albany, New York, Russell Sage, of Troy, New York, and Selah Chamberlain, of Cleveland, Ohio, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, &c., also of the city of New York, and thereupon the plaintiffs state:

That heretofore, and on or about the 31st day of December, in the year 1856, the La Crosse and Milwaukee Railroad Company, a corporation created by and under the laws of the State of Wisconsin, executed and delivered to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, a certain mortgage or deed of trust

(which is generally known and designated among those who have had dealings with the said company as the "land grant mortgage,") bearing date on that day, in which it was, among other things, recited that the said railroad company, for the purpose of constructing its road from Madison, by way of Portage City, to St. Croix river or lake, had determined to borrow a sum of money not exceeding ten millions of dollars, and to issue its bonds for the repayment of the money which might be borrowed, with the interest thereon, and had determined to secure the payment of such bonds in the manner provided in the said mortgage or deed of trust; and thereupon the said railroad company, for the purpose of securing the payment of the said bonds, did, in and by the said mortgage or deed of trust, grant, bargain, sell, convey, and confirm unto the said Bronson, Soutter, and Knapp, certain premises, which are therein described as follows, that is to say: "All and singular the several tracts, pieces, or parcels of land, which now are, or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may hereafter constitute or be a part of, the roads of the said railroad company from Madison, by way of Portage city, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage city to La Crosse; and also, all and singular the superstructure of said roads, whether now made,
1032 or to be made hereafter, and all the engine-houses, work-shops, depots, and other buildings, and all the other improvements on or pertaining to the said roads, whether now built and made, or to be built and made hereafter. And also, all and singular the locomotives, engines, and other rolling stock, and all other the equipments of every kind and description, which have already been, or may hereafter be, produced for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be, procured in connexion with said roads, or either of them. And also, all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description relating to said roads." And also, "all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of Wisconsin," mentioned in the said mortgage or deed of trust, "so far as the said lands pertain or are applicable to the construction of the said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land; together with all and singular the tenements, hereditaments, and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed." To have and to hold all and singular the premises aforesaid, and in the said mortgage or deed of trust conveyed, or intended to be conveyed, unto the said Bronson, Soutter, and Knapp, and the survivors and survivor, successors and successor, of them, and their and his heirs and assigns forever, as joint tenants, and not as tenants in common, in trust, nevertheless, and upon the trusts, terms,

and conditions in the said mortgage or deed of trust particularly set forth and declared, as by reference thereto, or to an authenticated copy thereof, to which, if necessary, the plaintiffs pray leave to refer, will more fully appear.

And the plaintiffs further say that the bonds which it was proposed by the said railroad company to issue under the said mortgage or deed of trust, were nine thousand bonds for one thousand dollars each,
1033 and numbered respectively from No. 1 to No. 9,000, inclusive, and two thousand bonds for five hundred dollars each, and numbered respectively from No. 1 to No. 2,000, inclusive, all dated on the first day of February, in the year 1857, and all payable on the first day of February, in the year 1877, at the Bank of the Republic, in the city of New York, with interest at the rate of seven per cent. per annum, payable in the city of New York, semi-annually, on the first days of February and August in each year, on presentation and delivery of the interest warrants or coupons which, for such semi-annual instalments of interest, were annexed thereto. But that after the said mortgage or deed of trust was made, and on or about the twenty-eighth day of January, in the year 1858, the said railroad company duly executed and delivered to the said Bronson, Soutter, and Knapp, as such trustees, a certain supplementary instrument, in writing, bearing date on that day, whereby it was recited, among other things, that the said railroad company was then engaged in the construction and completion of that part of their railroad which runs between Portage City and La Crosse, and had ascertained that, in order to complete the same, with the necessary turnouts, stations, depots, buildings, bridges, and all other appurtenances, it would not be necessary to issue bonds under the said mortgage or deed of trust to an amount exceeding, in the whole, four millions of dollars, including those which had then been already issued, and had accordingly resolved and determined that the issue of such bonds, for that purpose, should be limited to that amount, and that no lien should be created by the issue of bonds under such mortgage or deed of trust upon that portion of said road which runs between Portage City and La Crosse, or upon the lands appurtenant to that section of said road, to an amount, exceeding, in the whole, four millions of dollars, and it was thereby, among other things, provided, and the said railroad company did thereby covenant, grant, and agree to and with the said Bronson, Soutter, and Knapp, as trustees as aforesaid, for and in behalf of all such persons and corporations as then were, or should thereafter become or be the holders of any of the bonds within the amount of four millions of dollars, issued and to be issued as
1034 thereinbefore recited, and to and with the successors of said trustees, that no bonds exceeding, in the whole, including those already issued, the said sum of four millions of dollars should be issued under the said mortgage or deed of trust, so as to make the amounts thereof liens upon the said road from Portage City to La Crosse, or any part thereof, or upon any of the turnouts, bridges, depots, buildings, or other appurtenances thereof, or upon any of the rolling stock, materials, or other personal property acquired or to be

acquired, for or in connexion with the same, or upon any of the lands appurtenant to, or acquired or to be acquired for or in connexion with the same, or upon any of the lands appurtenant to, or acquired or to be acquired under or by virtue of said acts of Congress and of the State of Wisconsin, by reason of the construction of the said railroad from Portage City to La Crosse, as by the said supplementary instrument, or a duly authenticated copy thereof, to which the plaintiff begs leave to refer, will more fully and at large appear.

And the plaintiffs further state, upon information and belief, that the said railroad company issued and disposed of their bonds secured by the said mortgage or deed of trust, to the amount, altogether, of four millions of dollars so as aforesaid limited by the said supplementary instrument, and that the said railroad company has not issued any other or further amount of bonds under the said mortgage or deed of trust, and that all the bonds which have been issued under the same are generally known and designated, among those persons who have had dealings in the said bonds, or with the said railroad company, as "land-grant bonds."

And the plaintiffs further say, that the "Portage City," referred to in said mortgage or deed of trust, and in the said supplementary instrument, is situated in the interior of the State of Wisconsin, and the "La Crosse" therein referred to is situated on the western border of the said State, and that the said railroad company made and completed that part of their railroad which extends from one of the said places to the other, and that such part is known as the western division of their said railroad; and that at Portage City the same
1035 connects with the eastern division of said railroad, which extends from said Portage City to the city of Milwaukee, situated on the eastern border of the State of Wisconsin; and that said two divisions form together a continuous and connected line of railroad from said Milwaukee to said La Crosse. That the said railroad company has never made or constructed any railroad whatever from the "Madison" mentioned in the said mortgage or deed of trust to said Portage City.

And the plaintiffs further say, that the said railroad company became utterly and irretrievably insolvent, and made default in the payment of the interest coupons upon the said bonds for four millions of dollars issued by them as aforesaid under the said mortgage or deed of trust; and that after such default, and on or about the fifth day of December, in the year 1859, the said Bronson, Soutter, and Knapp, as trustees under the said mortgage or deed of trust, and behalf of the holders of the said bonds, filed their bill in the circuit court of the United States for the district of Wisconsin, against the said railroad company and other defendants for the foreclosure of the said mortgage or deed of trust, and for the sale of the said mortgaged premises, and for the satisfaction out of the proceeds of the same of the principal and interest moneys due and unpaid upon the said bonds; and that such proceedings were had in the said suit, that afterwards and on the thirteenth day of January, in the year 1862, a decree was duly made therein, by which the amount due for principal and interest

upon the said four millions of dollars of bonds was adjudged and determined as hereinafter stated, that is to say:

1. Upon the nineteen hundred and ninety-one of the said bonds for $1,000 each, and numbered from No. 1 to 1,991 inclusive, for principal (the whole of the money secured thereby) amounting to the sum of	$1,991,000 00
And for interest, the sum of	638,779 17
2. Upon the five hundred and nine of the said bonds, for $1,000 each, and numbered No. 1,992 to No. 2,500 inclusive, for principal (forty per cent. upon the face of the bonds) amounting to the sum of	203,600 00
And for interest, the sum of	65,321 67
3. Upon the fourteen hundred and fifty of the said bonds, for $1,000 each, and numbered from No. 2,501 to No. 3,950, inclusive, and upon the one hundred of said bonds, for $500 each, and numbered from No. 1 to 100, inclusive, for principal (forty per cent. upon the face of the said bonds) amounting to the sum of	600,000 00
And for interest, the sum of	192,500 00
Making together the sum of	3,691,200 48

And it was by the said decree further ordered, adjudged and decreed, among other things, that all and singular the said mortgaged premises in the said decree described, (being the same as those described in the said mortgage or deed of trust, and hereinbefore set forth, together with certain cars and rolling stock referred to in the said decree,) or so much thereof as might be sufficient to raise the said amount due for principal and interest, and the costs in the said cause, be sold at public auction, under the direction of the marshal of the United States for the said district, unless the said mortgagors, previous to such sale, should pay into court a certain sum mentioned in the said decree; that the said sale be made at the post office in the city of Milwaukee, within the said district, and that the said marshal give public notice of the time and place of such sale by advertisement in some newspaper in the city of La Crosse and in the city of New York, once in each week for three months previous to the day of sale, and that the complainants, or the bondholders, or any of the parties to the said cause, might become the purchasers of the said mortgaged premises; and that the said marshal, after the confirmation of said sale by the said court, execute a deed or deeds to the purchaser or purchasers of the said mortgaged premises,
1037 and that the said marshal bring into court, for distribution among the bondholders and other lien creditors, the proceeds of said sale, and that the bonds, secured by the said mortgage or deed of trust, might be received in part payment of the proceeds of such sale in the proportion as each bond at the principal thereof, for the amount thereof, according to the said decree (that is, the first

nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars) should bear to the amount of said sale ; and that the defendants in the said suit, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to the said mortgaged premises, and every part and parcel thereof, and that the purchaser or purchasers of the said mortgaged premises, at such sale, be let into the possession thereof to the extent allowed and granted by the said mortgage or deed of trust ; and it was by the said decree further ordered, that the said lands granted by the United States should be first sold, and that if the proceeds of the sale thereof should be sufficient to pay and discharge a certain sum mentioned in the said decree, with interest and costs, or if the said sum should be released or satisfied or paid into court, further proceedings under the said decree should be stayed, as by the said decree, or a duly authenticated copy thereof, to which, if necessary, the plaintiffs pray leave to refer, will, reference thereto being had, more fully appear.

And the plaintiffs further say that, in anticipation of the making of the said decree, and of the sale of the said mortgaged premises under the same, the holders of a large number of the said land grant bonds, and other creditors of the said company, formed in the city of New York a scheme or plan for the protection of their interests in and claims upon the said railroad company, by purchasing the said mortgaged premises at such sale, and by reorganizing the said railroad company in concert with the persons who held, or claimed to hold, the eastern division of the said railroad, and who held liens or claims upon the same, and that on or about the third day of September, in the year 1861, in the city of New York, a sketch or
1038 synopsis of said scheme or plan was reduced to writing, in the words and figures following, that is to say :

"*Proposed basis for re-organizing the La Crosse and Milwaukee Railroad Company.*

"SEPTEMBER, 3, 1861.

"Sell the road under decree of foreclosure. Let it be purchased for the benefit of assenting creditors and farm mortgage stockholders. Pay the present creditors and that class of stockholders with bonds and stock of the new company, as follows, viz:

"Value of property	$8,200,000

"Divided as follows:

"The mortgage on the whole road to be	$4,200,000	
"7 p. c. preferred stock	2,000,000	
"Common stock	2,000,000	
		$8,200,000

"Mortgage bonds to be appropriated as follows:		
"Reserved for first mortgage, eastern division	$886,000	
"Reserved for city of Milwaukee	314,000	
"To second mortgage, eastern division, 80 p.c.	800,000	
"Land grants Nos. 1 to 1,991, or first issue, at par	1,990,000	
"Land grants Nos. 1,992 to 2,500, or medium issues, at 40 p. c	210,000	
		$4,200,000
"Preferred stock to be appropriated to pay—		
"Int. on first issue land grants, at 25 p. c. or $250 per bond	500,000	
"To medium Nos. at 25 p. c	125,000	
"To second mortgage, eastern division, at 20 p. c	200,000	
1039 "Helfenstein mortgage, at 40 per cent.	150,000	
"Second issue land grants, at 48 p. c., Nos. 2,501 a 3,950 of the $1,000 bonds, and Nos. 1 a 100 of the $500 bonds	600,000	
"Judgment creditors and unappropriated	425,000	
		2,000,000
"Common stock to be appropriated to pay—		
"Second issue land grants, at 40 p. c	600,000	
"Farm mortgage stockholders, at 80 p. c	800,000	
"Milwaukee and Minnesota stockholders, (1,500,000,) at 20 p. c	300,000	
"Unappropriated	300,000	
		2,000,000

And the plaintiffs further say, that subsequently, and on the first day of October, in the year 1861, in the city of New York, the said bondholders and creditors who had become subscribers to the said scheme or plan held a meeting in reference to the same, and appointed the plaintiff Francis Vose, the defendants Isaac Seymour, Horace Galpen, Frederick P. James, William Gould, and David M. Hughes, and one Benjamin F. Dawson, their trustees and attorneys, to carry the same into effect, and that they thereupon, on the third day of the said month of October, made and entered into an agreement in writing in accordance with the sketch or synopsis above set forth, and amplifying the same, a copy of which agreement forming a part of this complaint is hereunto annexed, marked Schedule A. That the said trustees and attorneys then caused the said sketch or synopsis and the said agreement to be printed together in the form of a pamphlet, and to be distributed among the holders of the said bonds, and other persons interested in the said plan, and thereby and by circulars, and by advertisements in the public newspapers, and by
1040 other means caused the said scheme or plan to be made generally known to the said bondholders and other persons, and that they invited all of said bondholders to join in the same, and to

become parties to the said agreement, and to deliver their bonds to the said trustees and attorneys in order that they might use them in furtherance of the said scheme or plan; and that a large majority of the said bondholders, relying upon the good faith of the said trustees and attorneys, and that they would faithfully and honestly fulfil the trust which had been confided to them as aforesaid, did accordingly give in their adherence to the said scheme, and become the parties to a plan for purchasing the said mortgaged premises and reorganizing the said railroad company, as set forth in the said agreement; that the plaintiffs, Isaac M. Milbank and Robert W. Milbank, who are partners in business in the city of New York, under the name of I. and R. Milbank, being the owners and holders of nineteen of said bonds for one thousand dollars each, and two of the said bonds for five hundred dollars each, and the plaintiffs, Orville Oddie and Christopher R. St. George, who were partners in business in the city of New York, under the name of Oddie & St. George, being the holders of ninety-three of the said bonds for one thousand dollars each, and the plaintiff, William Crawshay, being the holder and owner of one hundred and three of the said bonds for one thousand dollars each, were, in the trust and confidence that the said trustees and attorneys would honestly and in good faith carry out the scheme or plan as it had been arranged as aforesaid, induced to and did join in the same; and that, at the times respectively mentioned in the certificates hereinfter referred to, they respectively delivered their said bonds to the said trustees and attorneys for the purpose of being held and used by them under the said agreement, and in reference to the scheme or plan therein set forth, and for no other use or purpose whatever. That the said nineteen bonds, for one thousand dollars each, held and owned by the said I. & R. Milbank, were respectively numbered 932, 936, 938, 940, 946, 987, 2182, 2329, 2330, 2332, 2835, 3558, 3643, 3829, 3882, 3938, and 3840, and that
1041 the said two bonds for five hundred dollars each, held and owned by them, were respectively numbered 5 and 6; and that upon the surrender by them of the said bonds to the said trustees and attorneys they received from them certificates therefor, copies of which, forming a part of this complaint, are hereto annexed, marked respectively schedules B, C, D, and E; that the said ninety-three bonds for one thousand dollars each, held by the said Oddie & St. George, were respectively numbered 13, 31, 58, 60, 404, 468, 500, 501, 502, 503, 504, 506, 572, 580, 615, 937, 665, 699, 771, 771, 781, 782, 801, 808, 824, 827, 853, 999, 1030, 1153, 1154, 1186, 1219, 1220, 1227, 1228, 1230, 1261, 1285, 1286, 1287, 1288, 1512, 1588, 1824, 1829, 1834, 1868, 1942, 1945, 1995, 2147, 2148, 2186, 2199, 2227, 2231, 2252, 2261, 2263, 2274, 2288, 2333, 2334, 2342, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2390, 2361, 2362, 2363, 2364, 2394, 2365, 2366, 2367, 2368, 2370, 2392, 3395, 2396, 2411, 2448, 2487, 2488, and 2500, and that the fourteen of said bonds for five hundred dollars each, held and owned by them, were respectively numbered 46, 47, 48, 49, 69, 70, 71, 72, 75, 79, 94, 95, 99, and 100; and that, upon the surrender of said

bonds by them to the said trustees and attorneys, the said Oddie & St. George received from them certificates therefor, as follows, that is to say: for the said bonds Nos. 13, 31, 58, 60, and 404, the certificate, a copy of which, forming a part of this complaint, is hereunto annexed, marked schedule F, and for the remainder of said bonds for one thousand dollars each, of low numbers, that is to say, for the remainder of said bonds from number 13 down to and including that numbered 1945, other certificates of the same purport and effect, and in the same form; for the said bonds numbers 1995, 2147, 2148, 2186, and 2199, the certificate, a copy of which, forming a part of this complaint, is hereto annexed, marked schedule G, and for the remainder of said bonds for one thousand dollars each, of medium numbers, that is to say: for the remainder of said bonds, from number 1995 to and including that numbered 2500, other certificates of the same purport and effect, and in the same form as that last mentioned, and for the said bonds for five hundred dollars each, the certificate, a copy of which, forming a part of this complaint, is hereunto annexed, marked
1042 Schedule H; and that the one hundred and three of said bonds for one thousand dollars each, held by the said William Crawshay, were numbered respectively, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 2994, 3056, 3141, 3143, 3249, 3250, 3253, 3255, 3256, 3257, 3355, 3454, 3469, 3470, 3471, 3472, 3473, 3600, 5603, 3738, 3777, 3855, 3855, 3885, 3897, and 3813, and that upon the surrender by him of the said bonds to the said trustees and attorneys, he received from them therefor certificates, as follows, that is to say, for the said bonds numbers 1073, 1074, and 7075, the certificate, a copy of which, forming a part of this complaint, is hereunto annexed, marked Schedule I, and for the remainder of the said bonds of low numbers, that is to say, for the remainder of said bonds from number 1073, down to and including number 1418, other certificates of the same purport and effect, and in the same form, and for the said bonds numbers 2994, 3249, 3250, 3253, and 3255, the certificate, a copy of which, forming a part of this complaint, is hereunto annexed, marked Schedule J, and for the remainder of the said bonds of high numbers, that is to say, for the remainder of the said bonds from number 2994 to and including number 3913, other certificates of the same purport and effect, and in the same form as that last mentioned, and the said William Crawshay, Isaac M. Milbank, Robert W. Milbank, Orville Oddie, and Christopher R. St. George do (each for himself) say, that if they had suspected or supposed, or had any reason to suspect or suppose, that the said trustees and attorneys could or would have deviated from the scheme or plan for the purchase of the said mortgaged premises, and

the reorganization of the said railroad company, as such scheme or plan had been arranged as aforesaid, they would not, nor, as they believe, would any other holder of the said land-grant bonds have
1043 become parties to the same, or have intrusted the possession of their bonds to the said trustees and attorneys.

And the plaintiffs further say, that on or about the eight day of May last, the said Benjamin F. Dawson resigned his office as one of the said trustees and attorneys, under the said agreement, and that one George Smith was appointed in his place, and that the said George Smith afterwards resigned, and that the defendant, Nathaniel A. Cowdrey, was subsequently, and on or about the 10th day of July last, appointed a trustee and attorney in his place, and has since acted in that capacity, in connexion with the other trustees and attorneys.

And the plaintiffs further say, that the sale of the mortgaged premises, under the said decree in the foreclosure suit hereinbefore mentioned, was first advertised to take place in the city of Milwaukee, on the twenty-eighth day of July last, but that it was adjourned from that day to the second day of October following, and that on the last-mentioned day the said sale took place, and the said mortgaged premises were sold by the said marshal of the United States for the District of Wisconsin, under the said decree, and were at such sale bid in by the said trustees and attorneys, in the names of the said Isaac Seymour, Frederick P. James, and Nathaniel A. Cowdrey, under the said agreement of October 3, 1861, and for and in behalf of their principals the holders of said land-grant bonds, and the other persons who had become parties to the scheme or plan set forth in the said agreement, for sums which, in the said marshal's report of said sale, are stated to amount in the aggregate to the sum of two millions one hundred thousand dollars, and that they, the said trustees and attorneys, paid to the said marshal, on account of the said purchase money, the sum of two millions and nineteen thousand eight hundred and ninety-five dollars and forty-three cents, in the bonds belonging to the said plaintiff and others, which had been delivered and intrusted to the said trustees and attorneys, as aforesaid. That, as the plaintiffs are informed and believe, the said sale has not yet been confirmed, nor has a deed for the said mortgaged premises been yet delivered
1044 to the said trustees and attorneys, but that they have taken, and are pursuing measures in order to procure the said deed.

And the plaintiffs further say, that since the said sale was made, and since the said mortgaged premises were bid in as aforesaid, the said Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, William Gould and David M. Hughes, six of the said trustees and attorneys, or some of them, instead of carrying out in good faith the aforesaid scheme or plan, which was assented to by the said bondholders, and set forth in the said agreement of October 3, 1861, have, in violation of the trust reposed in them and of the said agreement, been engaged in efforts to frustrate and defeat the same, and, without any warrant or authority, to substitute therefor another and different scheme or plan, which was never contemplated by the said land-grant bondholders, and would never have been assented to by

them, and which if carried out, will, as the plaintiffs believe, involve the sacrifice of the interests of the said land-grant bondholders in the said mortgaged premises, and the loss to a great extent of the amount due to them on the said bonds. And that, in furtherance of such design on the part of the said trustees and attorneys, they, as the plaintiffs are informed and believe, have entered into negotiations and arrangements with one Selah Chamberlain and one Russell Sage for the purchase of two railroads in the state of Wisconsin, not at all connected with the said western division of the La Crosse and Milwaukee Railroad, and which are covered by mortgages and debts, and involved in litigation, and under great and, as the plaintiffs believe, irretrievable embarrassments; one of which railroads, sometimes called the Milwaukee and Western Railroad, but commonly known as the Watertown Road, begins about fifteen miles from the city of Milwaukee, and runs to Columbus, in the interior of the state of Wisconsin, which is about thirty miles from said Portage City; and the other of which, known as the Milwaukee and Horicon Railroad, runs from Berlin, in the state of Wisconsin, which is about forty miles from said Portage City, to a point on the eastern division of the said La Crosse and Milwaukee Railroad, more than forty miles, in an easterly direction, from the said Portage City.

1045 That, as the plaintiffs are informed and believe, the said Watertown Road, besides being held by an uncertain and doubtful title, in relation to which questions and litigations are likely to arise, and being subject to divers large claims, is subject to the following mortgages, that is to say:

1st. A mortgage to Isaac Seymour, trustee, dated August 1st, 1853, to secure $310,000 of eight per cent. bonds.

2d. A mortgage or mortgages to the city of Milwaukee, to secure the payment of $200,000 of said city bonds.

3d. A mortgage to J. M. Warren, trustee, dated February 1st, 1856, to secure $150,000 eight per cent. bonds.

4th. A mortgage to Greene C. Bronson and James T. Soutter, trustees, dated 17th August, 1857, to secure $100,000 of eight per cent. bonds.

5th. A mortgage to Alexander Mitchell, trustee, dated 13th October, 1858, to secure $1,000,000 of eight per cent. bonds.

6th. A mortgage to Alfred Noxon, dated 22d December, 1858, to secure $100,000, with interest at twelve per cent. per annum.

7th. Another mortgage to Alfred Noxon, dated 22d December, 1858, to secure $100,000, with interest at eight per cent. per annum.

8th. A mortgage to Alexander Mitchell and Washington Hunt, trustees, to secure seven per cent. bonds to the amount of $1,500,000.

And that during the past five years the persons, whomsoever they are, or the company, whatsoever it is, holding, or pretending to hold, manage, or control the said Watertown Railroad, have been from time to time in default in payment of the interest, even upon the said bonds secured by the said first mortgage for $310,000,

1046 and have made default entirely in the payment of interest upon others of said bonds; and that foreclosure suits have been com-

menced, and are now pending, against the said company; and the said company, as the plaintiffs are informed and believe, is now, and has been for a long time past, utterly and irretrievably insolvent; and that the bonds issued and outstanding under some of the said mortgages have no market value whatever, and would not produce anything more than a nominal sum if offered for sale; and that of all these facts the said agents and attorneys had notice when they entered into the negotiations with the said Chamberlain and Sage to purchase the said Watertown Railroad.

That, as the plaintiffs are informed and believe, the said Milwaukee and Horicon Railroad Company, besides owing a considerable floating debt, and being subject to divers large claims, is also subject to various mortgages; and that upon some or one of these mortgages foreclosure proceedings have been commenced, and are now pending, against the said Milwaukee and Horicon Railroad Company.

And the plaintiffs further say that, as they are informed and believe, the said Selah Chamberlain has for many years past been a speculator and jobber in the affairs and securities of the said La Crosse and Milwaukee Railroad Company, and is, to a great extent, responsible for the disasters and ruin which have befallen it; that he and the said Russell Sage have always been hostile to the said land-grant bondholders, and have, in various ways, endeavored to circumvent them, and to deprive them of their rights and remedies against the said company and against the said mortgage security; that the said Chamberlain claims to have recovered a judgment in the district court of the United States for the district of Wisconsin, against the said company, for upwards of six hundred and twenty thousand dollars; and also to be the assignee of a judgment (commonly called the Cleveland judgment) recovered by one Newcomb Cleveland, against the said company, for upwards of a hundred and eleven thousand dollars; and that, under these judgments, he has attempted to get and retain the possession and control of the said La Crosse and Milwaukee railroad, as against the said land-grant bondholders, and other creditors of the said company;
1047 and that the said Russell Sage, besides being interested in the said two judgments, is one of the principal parties concerned in the said Watertown railroad, and a large and principal holder of the mortgage bonds of an inferior grade which have been issued by the said Milwaukee and Western Railroad Company, or by the other companies which, from time to time, have owned the said Watertown railroad, and has long been engaged in efforts to render them available, and that in the pursuit of this object he has, for several years past, been endeavoring to obtain a foothold in and a control over the property covered by the said land-grant mortgage. And the plaintiffs say that, although from the secret and underhand manner in which the said Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, William Gould, and David M. Hughes have conducted their negotiations with the said Chamberlain and Sage for the purchase of the said Watertown railroad and

the said Milwaukee and Horicon railroad, they, the plaintiffs, cannot state the exact particulars and results of such negotiations, yet they believe and charge that the assumption and payment of the said pretended judgments claimed to be held by the said Chamberlain, and the payment of the said bonds issued under mortgages upon the said Watertown railroad, and held by the said Sage, are prominent features in such negotiations, and in the bargain or understanding which has resulted therefrom between the said last above-named trustees and attorneys and the said Chamberlain and Sage, and that, so far as the latter are concerned, their main purpose was and is to secure the payment of such pretended judgments and of said bonds, and of other worthless claims which they have, or one of them has, against the said Watertown railroad, and that all the other features of such negotiations were and are, on their part, a mere cover leading to that end; and the plaintiffs further say, (the said Francis Vose, from his own knowledge, and the other plaintiffs upon information and belief,) that on or about the tenth day of July last, (which was a short time before the day first appointed for the sale of the mortgaged premises, covered by the said land-grant mortgage, under the decree of the circuit court of the United States
1048 for the district of Wisconsin, hereinbefore set forth,) the said Russell Sage and one Alfred Noxon, (who is also the holder of claims of an inferior grade against the said Watertown railroad, and deeply interested in having them converted into something of value,) and the said Selah Chamberlain, respectively addressed to the said Isaac Seymour, as chairman of the said trustees and attorneys, two letters, copies of which, forming a part of this complaint, are hereunto annexed, marked respectively schedules K and L; that the said two letters were laid before the said trustees and attorneys at a meeting which they held on the fifteenth day of the said month of July, and that, at such meeting, there were passed, upon the affirmative votes of the said Isaac Seymour, Nathaniel A. Cowdrey, Frederick P. James, and David M. Hughes, against the negative votes of the said Horace Galpen and Francis Vose, the resolutions, a copy of which, forming a part of this complaint, is hereunto annexed, marked schedule M; but that the said Francis Vose, having threatened to make the said resolutions known to the said land-grant bondholders, a meeting of the said trustees and attorneys was subsequently called, and the said resolutions were rescinded by the concurring votes of the said persons who had passed them. But the plaintiffs say that, although such resolutions were rescinded, yet they believe and charge the fact to be that they were so rescinded merely for the purpose of deluding the said bondholders, and of preventing inquiry on their part into the acts and purposes of the said trustees and attorneys, and with the covert design on the part of the said Seymour, Cowdrey, James, and Hughes, and with a secret understanding between them and the said Chamberlain and Sage, that the purpose which the said resolutions were intended to subserve should be afterwards carried into effect; and the plaintiffs say that, as they believe, the said letters and said resolutions contain, substantially, the terms of

the bargain or arrangement which was subsequently made between the said trustees and attorneys and the said Chamberlain and Sage, in reference to the said Watertown railroad.

And the plaintiffs further say that, as they are informed and believe, the said judgment which the said Chamberlain claims
1049 to hold against the said La Crosse and Milwaukee Railroad Company, and which comprises the whole or the greater part of what he proposed to sell to the said trustees and attorneys, in and by his letter, a copy of which is annexed as said Schedule L, was docketed against the said company on the second day of October, 1857, and was so docketed without the service of any process upon or suit brought against the said company, and after it had become insolvent and unable to pay its debts; and that it was so confessed and docketed in pursuance of a fraudulent design and arrangement on the part of the said Chamberlain, and of certain officers of the said company, to keep the said Chamberlain in the possession and management of the railroad of the said company, against its creditors, and with the purpose of hindering, delaying, and defrauding said creditors; that the amount of the said judgment had never been ascertained by any adjustment or settlement of accounts between the said Chamberlain and said company, and was not due or owing to the said Chamberlain; and that the said judgment has, for several years past, been generally considered by those persons who have had dealings with said company, as a fraudulent and invalid one. That the said judgment in favor of Newcomb Cleveland was for the sum of one hundred and eleven thousand seven hundred dollars and seventy-one cents, and was docketed on the third day of October, in the year 1857, in the district court of the United States for the district of Wisconsin, and that upon a bill filed by him on the equity side of the said court, against the said La Crosse and Milwaukee Railroad Company and the said Chamberlain and others, the matters aforesaid in regard to the said judgment so confessed in favor of said Chamberlain, and other matters against the validity of the said judgment, were set up and alleged; that the said Chamberlain appeared and put in an answer to the said bill, and issues were thereupon made and testimony was taken in the said equity suit, and that afterwards the said suit was brought to a hearing upon the pleadings and proofs therein, and that the said district court in equity afterwards, on the third day of January, in the year 1859, made a decree in the said suit, (a copy of which, forming a part of this complaint, is hereunto annexed, marked Schedule N.) by which it was, among other
1050 things, ordered, adjudged, and decreed, that the said judgment, so as aforesaid confessed in favor of the said Selah Chamberlain, and all executions and proceedings thereon, be, and they thereby were, vacated, annulled, made void, and set aside, so that the same should have no further effect whatever. That after the last-mentioned decree had been made, and on or about the second day of March, in the year 1859, the said Cleveland having been paid and satisfied the amount of the said judgment, he, at the request of the said Chamberlain, made to the said Chamberlain an assignment of the said judgment, and transferred to him all further control

and management of the said suit in equity, and that thereafter the said Chamberlain, through solicitors and counsel employed by him, managed the said equity suit on both sides thereof, and took and perfected an appeal to the Supreme Court of the United States, from the said last-mentioned decree, which appeal was subsequently dismissed by the said Supreme Court, on the ground of the fraud therein on the part of the said Chamberlain. And the plaintiffs claim and charge that the said Chamberlain has no longer any demand against the said La Crosse and Milwaukee Railroad Company, either upon the said judgment confessed to him, nor upon that recovered by the said Cleveland and assigned to him as aforesaid. And the plaintiffs say that, as they are informed, it is alleged, and, as the plaintiffs believe, truly, by and on the part of the persons who have succeeded to the rights of the said La Crosse and Milwaukee Railroad Company, that the latter judgment has been satisfied, in whole or in part, from and out of the property of the said company, and that any balance thereof not so satisfied would, in the hands of the said Chamberlain, be extinguished and absorbed by the amounts which will be found to be due from him to the said company upon a just and equitable settlement of accounts between him and the said company.

And the plaintiffs further say that, as they are informed and believe, the said Selah Chamberlain and Newcomb Cleveland were made parties defendants to the said suit for the foreclosure of the said land-grant mortgage, and that all liens or claims which they or either of them ever had, (if any they ever had,) by judgment
1051 or otherwise, upon or against the western division of the said La Crosse and Milwaukee Railroad and the other mortgaged premises described in the said land-grant mortgage, were for ever barred and foreclosed by the decree in that suit hereinbefore referred to.

And the plaintiffs further say, that the scheme or plan of the said trustees and attorneys, comprised in the bargain or arrangement which they have made with the said Chamberlain and Sage, involves an entire departure from and a complete and absolute frustration of that to which the said bondholders have given their assent as aforesaid, and which the said trustees and attorneys originally appointed were selected to carry into effect; and that, besides involving and mixing up the said bondholders and their rights and interests with the concerns of two broken-down railroad companies, with which they never contemplated any connexion whatever, the said trustees and attorneys have undertaken and propose to increase and enlarge the issues of bonds and stocks of the company, to be formed by them, to the amount of four millions and fifty thousand dollars beyond the utmost amount of such issues which were contemplated in the said original plan or scheme of reorganization, or in the said agreement of October 3, 1861, and thus to encumber the property of the said bondholders which they are entitled to under the said foreclosure sale to that amount in excess of any sum which they have ever authorized or sanctioned. For the plaintiffs say, that by the said original plan or scheme of the 3d September, 1861, and the said agreement of October 3, 1861, the issues of bonds and stock of the

railroad company proposed to be reorganized thereunder were expressly limited to eight millions two hundred thousand dollars, as follows, that is to say:

The mortgage on the whole road to be	$4,200,000
7 per cent. preferred stock	2,000,000
Common stock	2,000,000
Amounting together to	8,200,000

Whereas, in the scheme or plan of the said trustees and
1052 attorneys, which they have formed and are endeavoring to carry into effect as aforesaid, they propose and have undertaken to make issues of bonds and stocks as follows, that is to say:

To make a new clean first mortgage over the consolidated property of the old companies, of not exceeding	$6,600,000
To issue preferred stock not exceeding	3,400,000
To issue common stock	2,250,000
Amounting together to	12,250,000

And the plaintiffs further say, that notwithstanding the extraordinary and unwarrantable usurpation of the rights and jeopardizing of the interests of the said land-grant bondholders involved in such proceedings, the said trustees and attorneys have not, so far as the plaintiffs know or are informed, disclosed to the said bondholders (except as hereinafter stated) what disposition they intend to make of the said excess of bonds and stock; and that after the appropriations which they pretend to have made of the same under the said plan or scheme, there is, as the plaintiffs are informed and believe, a surplus of the said bonds and stock proposed to be issued by them of upwards of one million five hundred thousand dollars, which is entirely unaccounted for. And the plaintiffs believe and charge that the said trustees and attorneys, who have concocted or aquiesced in said scheme or plan in the interests of the said Chamberlain and Sage, or some or one of them, are personally in terestedin carrying out the same, either as holders themselves of claims against the said Watertown railroad, or as representing some other person or persons holding such claims, or that they, or some or one of them, are or is in some other way personally interested in the accomplishment of said plan or scheme; and that they, or some or one of them, are or is to receive, either out of said surplus, or from the proposed issue of stock or bonds which they pretend to have appropriated in pursuance of such plan or scheme, some personal gain or advantage.

And the plaintiffs further say that, as they are informed and
1053 believe, the said trustees and attorneys (except the said Francis Vose) called a meeting of their principals, the persons who had assented to the said agreement of October 3, 1861, to be held in the city of New York on the twenty-ninth day of October last, and that, at such meeting, it was attempted to forestall the action of the

persons who were present at the same, and to obtain their assent to the said new scheme or plan without having it subjected to any scrutiny or examination, but that objection having been made, and it having been required that some details of what was proposed to be done by the said trustees and attorneys should be submitted to their principals for their consideration, the said meeting was adjourned to the sixth day of November following, in order that that might be done. That shortly after the said meeting, the said trustees and attorneys (excepting the said Francis Vose) caused to be published in pamphlet form the paper, forming part of this complaint, which is hereunto annexed, marked schedule O, and that a printed copy of such paper was distributed to some of the said land-grant bondholders in the city of New York, but, as the plaintiffs are informed and believe, it was not sent to any of the said bondholders (comprising a considerable number) who resided in places remote from that city, and especially that it was not sent to any of the said bondholders (comprising also a considerable number) who resided in Europe; and that subsequently, and on the said sixth day of November, the said adjourned meeting was held for the purpose of considering the said paper, and the propositions contained in it, and that at such meeting the resolutions contained in the said paper were, after some slight modifications not affecting their main design, adopted by a *viva voce* vote. But the plaintiffs say that, as they are informed and believe, the said meeting was conducted with great irregularity, and was largely composed of persons who, apart from any interest which they had under the said agreement of October 3, 1861, were desirous of furthering the plan or scheme referred to in the said resolutions; and that no means whatever were taken at the said meeting for the purpose of ascertaining whether the persons who attended the same, and who voted for the said resolutions, were actually holders of any of the
1054 said land-grant bonds, or if they were, what amount of the said bonds they actually held, and that it was not made to appear at the said meeting that the holders of a majority, or of any considerable amount, of the said land-grant bonds who had assented to the said agreement of October 3, 1861, either attended the said meeting or voted for the said resolutions; and the plaintiffs are informed and believe that the holders of a majority of the said land-grant bonds, who had assented to the agreement of October 3, 1861, were not present at the said meeting, and did not vote for the resolutions set forth in the said schedule O, and have not in any other way given their assent to the said scheme or plan of the said trustees and attorneys therein set forth, or to any other scheme or plan of theirs different from or modifying or altering that set forth in the said agreement of October 3, 1861, to which they originally gave their assent as aforesaid. And the plaintiffs say that, so far as they are concerned, they have never assented to the said new scheme or plan, or to the said resolutions, or to any modification or alterations of the said agreement, but are, and always have been opposed to the same.

And the plaintiffs further say that, as they are informed and believe, the said paper marked schedule O, contains all the information which

the said trustees and attorneys have communicated to the said land-grant bondholders in regard to their proposed subversion of the scheme or plan which they were selected as aforesaid to carry into effect, and their proposed adoption of a new and different scheme or plan, and that the action of the said meeting is the only justification which they have for their attempt to depart from the line of their duty as prescribed by the said agreement of October 3, 1861. And the plaintiffs say that, as they are advised and insist, even if said meeting had been composed entirely of persons who had assented to the said agreement, and the said original scheme or plan, and a majority of them had concurred in and voted for the said resolutions, yet that the said trustees and attorneys would not thereby have been justified in the course which they have pursued, for the plaintiffs say, that, as they are advised, the fourteenth section of the said agreement which
1055 authorizes, in the manner therein provided for, amendments to be made to the said agreement, is to be interpreted and construed in reference to the subject matter of the said agreement and did not, and does not contemplate, and cannot rightly be construed as contemplating, so complete and radical a departure from its whole plan and object as the said trustees and attorneys have attempted to make, or anything more than such a modification of its details as, in consistency with its general purpose, should be found to be necessary in carrying that purpose into effect; that the so-called amendments proposed as aforesaid by the said trustees and attorneys do not fall within the meaning of the said fourteenth section, and that no effect or operation can be given to them except by the express and written consent of all of the persons who assented and became parties to the said original agreement of October 3, 1861.

And the plaintiffs further say, that, as they are informed and believe, the said Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, William Gould, and David M. Hughes, in furtherance of their said scheme or plan, and in order to secure themselves against the vigilance and opposition of the said Francis Vose, who was originally appointed one of the said trustees and attorneys, have, without any authority whatever, and by mere usurpation, undertaken to remove him from that office, and have passed a resolution to that effect, and have since then carried on their proceedings under the said agreement of October 3, 1861, separate and apart from him, and that they have also, without any authority, undertaken to appoint the said Russell Sage, trustee and attorney, under the said agreement, in the said Francis Vose's place, and have since then treated the said Sage as holding that office, and have permitted him to act with them in that capacity under the said agreement. And that they have also, in furtherance of their said scheme or plan, arranged that some of themselves and the said Sage and Chamberlain and certain other persons in the interests of the said Sage and Chamberlain, shall be a majority of the directors of the raiload company proposed to be formed by them under the same. And that they intend by and through the said Greene C. Bronson, James T. Soutter, and Shep-
1056 herd Knapp, the mortgagees in trust under the said land-

grant mortgage and the plaintiffs in the said foreclosure suit, to have the sale of the mortgaged premises, under the decree in that suit, confirmed, and to obtain a deed of the said mortgaged premises and then, in concert with the said Sage and Chamberlain, to transfer the said mortgaged premises to a new company to be thus organized by them, under their said scheme or plan, in subversion of that provided for in the said agreement of October 3, 1861, and in violation of the rights and interests of the assenters and parties to the said agreement.

And the plaintiffs further say that, by reason of the premises, they have no longer any confidence whatever in the said Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, William Gould, and David M. Hughes; that they have, as the plaintiffs charge, been faithless to the trust which has been reposed in them, and are unfit and unworthy to act any longer as the trustees and attorneys of the persons assenting to the said agreement of October 3, 1861.

Wherefore the plaintiffs demand judgment, that the said Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, William Gould, and David M. Hughes, may be removed from office as such trustees and attorneys under the said agreement of October 3, 1861, and that all power, right, and authority which they have under the same may be revoked and annulled, and that suitable and proper persons may be appointed by this court in their place and stead, with all the necessary powers and authority to carry into effect the said agreement, and the plan or scheme therein and thereby contemplated and provided for, and to act in that behalf in conjunction with the said Francis Vose; and that it may be declared and adjudged that the attempt to remove the said Francis Vose, as one of said trustees and attorneys, and the attempt to appoint the said Russell Sage as trustee and attorney in his place, and all action of the said Seymour, Galpen, Cowdrey, James, Gould, and Hughes thereupon, was unauthorized and of no effect, and that all bargains or arrangements made by the said trustees and attorneys for the purchase or acquisition by them, in behalf of the persons who assented
1057 or became parties to the said agreement of the said Watertown railroad, or the said Milwaukie and Horicon railroad, or for the payment or settlement of any debt or claim against the said railroads, or either of them, and any bargain or arrangement made by the said trustees and attorneys with the said Selah Chamberlain and Russell Sage, or either of them, to pay to them, or either of them, any money, or to transfer or deliver them, or either of them, any of the stocks or bonds proposed to be issued by the railroad company to be formed under the said agreement of October 3, 1861, and all plans, bargains, schemes, or arrangements, whereby there shall be issued, or proposed to be issued, any greater amount of stocks and bonds of the said railroad company so to be formed under the said agreement of October 3, 1861, than as provided for in the said agreement, may be declared and adjudged to be unauthorized, void, and of no effect; and that it may be further declared and adjudged, that the so called amendments to the said agreement of

October 3, 1861, which were adopted at the said meeting held on the sixth day of November last, are no part of the said agreement, and ineffectual to effect any modification or alteration of the same, and that the provisions of the said agreement may be enforced and carried into effect by and through the said Francis Vose, any such persons, acting in conjunction with him, as shall be appointed by this court, in the place and stead of the said Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, William Gould, and David M. Hughes; and that the defendants in this action may be directed to pay the plaintiffs' costs and expenses therein, and that the plaintiffs may have such further or other judgment or relief as the nature of their case may require, and as shall be equitable and just; and that during the pendency of this action, and until the judgment of this court therein, the said Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, William Gould, David M. Hughes, and Russell Sage, and each and every of them, may, together with their attorneys, solicitors, and agents, be enjoined and restrained, by the order of this court, from taking any further action, or doing or performing any act or thing whatever under the said agreement of October
1058 3, 1861, as trustees and attorneys for the persons who assented or became parties thereto, or in any other capacity, and from doing or attempting to do, or directing to be done, any act or proceeding for the confirmation of the sale made by the marshal of the United States for the district of Wisconsin, under the decree of foreclosure made by the circuit court of the United States for the district of Wisconsin, hereinbefore set forth, and from accepting or receiving a deed for the mortgaged premises described in the said decree, either from the said marshal or any other person or persons, and from directing or authorizing any other person or persons to accept or receive the said deed, and from re-organizing, or doing or performing any act or thing towards re-organizing, a new corporation under the said agreement of October 3, 1861, or under the said pretended amendment or alterations of the same. And that the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, may, together with their attorneys, solicitors, and agents, be also enjoined and restrained, by the order of this court, from moving for the confirmation of the said sale, or entering any order thereupon, and from doing or attempting to do, or directing to be done, any other act or proceeding for, or which shall result in, the confirmation of the said sale under the said decree, and also from doing, or attempting to do, or directing to be done, any act or thing for, or which shall result in, the delivery of the deed for the said mortgaged premises to the said Isaac Seymour, Horace Galpen, Nathaniel A. Cowdry, Frederick P. James, William Gould, David M. Hughes, and Russell Sage, or either of them.

EVARTS, SOUTHMAYD & CHOATE,
Attorneys for Pl'ffs.

First Affidavit of Vose & Oddie.—Dec. 23, 1862.

CITY AND COUNTY OF NEW YORK, *ss:*

Francis Vose, one of the above named plaintiffs, and the agent and attorney of William Crawshay, another of said plaintiffs, in respect of the matter of his interest in this action, and Orville Oddie, another of said plaintiffs, being severally duly sworn, do depose and say: That they have read the foregoing complaint, and know the contents thereof, and that the same is true to their own knowledge, 1059 except as to the matters therein stated upon information and belief, and that as to those matters they believe the same to be true. And further they say not.

F. VOSE,
ORVILLE ODDIE.

Sworn to before me this 23d day of December, 1862,
JAMES W. MONK,
Notary Public, New York City.

SCHEDULE A.

[Referred to in the annexed complaint.]

Agreement between the assenting creditors of the La Crosse and Milwaukee Railroad Company, for the purchase of said road, and the organizing a new corporation for the benefit of the purchasers, made October 3, 1861.

Whereas the subscribers to a plan for a "proposed basis for reorganizing the La Crosse and Milwaukee Railroad Company," dated September 3, 1861, at a meeting regularly called and held October 1, 1861, duly elected the undersigned, Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis Vose, Fred. P. James, William Gould, and D. M. Hughes, trustees and attorneys of the parties assenting to said plan or basis:

And whereas, the said parties at said meeting unanimously passed a resolution in the following words, viz:

"*Resolved*, That the trustees, or a majority of them, elected to carry into effect the plan of purchasing the La Crosse railroad, and of organizing a new corporation of the purchasers, with such modifications as they deem for our interest, are hereby authorized to purchase the whole or any part of the real or personal property of said railroad company, at any foreclosure or other sale that may be 1060 made of it, and to organize a new corporation with the usual powers and privileges of similar corporations; and to convey the premises so purchased to said new company; also to do any and all things pertaining to this matter, except to obligate us personally for the payment of money, which a majority of them deem for our benefit, as fully as we might do if personally present; and they may add to their number, or fill any vacancies which may occur."

Now, therefore, in pursuance of the authority so conferred upon us, we do hereby declare and adopt this instrument as and for an agree-

ment by and between the said creditors of the said La Crosse and Milwaukee Railroad Company, and all certificates, receipts, or other evidences given by us in exchange for bonds or other claims against said road are to be held subject to the provisions herein contained. And this agreement shall not be altered or modified except as provided in the 14th article hereof.

First. That said trustees, or a majority of them, are authorized to purchase the whole or any part of the real or personal estate of the said railroad company, and to convey the same to a new company to be formed for the benefit of the assenting bondholders and claimants, entitled to participate in the benefits of this agreement.

Such sale and purchase to be made subject to all the liens, rights, and claims of the holders of any prior mortgage, and the said railroad and corporate property so purchased shall be held subject to the conditions and agreements herein contained and declared, and in trust for the benefit of the assentents hereto.

The said trustees or attorneys shall have power to advise with the trustees prosecuting the suits of foreclosure, and to give full direction from time to time in regard to said suits, or any other which may be brought affecting in any manner the rights or interests of the assentents, and generally to do any and all things which they deem for the benefit of the assentents, as fully as they might do if personally present.

1061 But this power is limited so that neither the said trustees or attorneys, nor their successors in the trust, nor any person under them, shall have power or authority to do any act or thing whereby any assentent shall become liable to pay any money unless he shall hereafter give his written assent. Nor shall they have power to sell, hypothecate, or in any manner encumber the bonds, coupons, or other evidences of debt, which may come into their possession, or in any manner be under their control by virtue of this agreement.

Second. That said trustees, or a majority of them, shall, whenever in their judgment it will best promote the interest of the said bondholders and claimants, organize a new corporation, on the following terms, limitations, and conditions, viz:

1st. That the name of the new corporation shall be "The Milwaukee and St. Paul Railway Company," of which there shall be nine directors, of whom one-third shall be bondholders, one-third preferred stockholders, and one-third common stockholders.

2d. That the said company shall have no power to create any debts, except a new first mortgage not exceeding $4,200,000 in amount, including the amount of outstanding first mortgage bonds on the eastern division, at the time of organizing the new company, estimated at that time to be about $886,000, and the Milwaukee city bonds, secured by mortgage on the same property, amounting to $314,000, unless the assent in writing of two-thirds of the bondholders, and also two-thirds of the preferred stockholders, shall be first had and obtained, authorizing the same; but this prohibition shall not apply to the assuming of any prior mortgage debts or liens which the roads or property of the old company shall be incumbered by at the time of the purchase.

3d. That the preferred stock shall not exceed $2,000,000, exclusive of a sufficient sum to provide for the converson of the said new first mortgage bonds, and in all shall not exceed $6,200,000.

1062 That it shall be entitled to a dividend of seven per cent. per annum from the net earnings of each current year, after payment of interest on all the mortgage bonds, if the company earn so much during the current year, and before any payment of dividends to any other class of stockholders; if the net earnings of the company are not so much in any one year, then the said preferred stock shall receive for that year a dividend of whatever the said net earnings are, after payment of interest on the mortgage bonds; and said preferred stock shall not have any claim upon the earnings of any other year for the non-payment of dividends of preceding year.

4th. That the common stock to be issued shall not exceed the sum of $2,000,000, and until the company's net earnings are sufficient to pay interest on all their mortgages, and a full dividend on their preferred stock, the said common stockholders shall not be entitled to vote upon their stock.

5th. That the mortgage deed of trust given to secure the bonds of the new company, and to be received by the assentents, shall be well and faithfully drafted and executed, so as to give them all the security for the payment of their bonds, principal, and interest, that counsel, learned in the law, shall advise to be reasonable and proper for their security and protection. And it shall be a first and only mortgage on the whole road, franchises, and equipments, property, real and personal of the company, and shall be made to secure the payment of $4,200,000 in bonds bearing interest at seven per cent. per annum; principal and interest, payable in the city of New York, interest semi-annually, and the principal payable thirty years from the date of the mortgage.

The mortgage shall also contain a provision for a sinking fund for the payment of said mortgage bonds, by which the new company shall obligate themselves to pay to the trustees of said mortgage bonds all such sums of money as shall be derived from the sale of any lands which may have been, or shall hereafter, be donated or granted by either the United States or the State of Wisconsin, to aid in

1063 building this road, or that shall in any manner be acquired by said trustees under this agreement, or by the new company, by reason of the foreclosure and sale of any lands heretofore mortgaged to secure the payment of any bonds held by parties assenting hereto. And said lands shall be fairly and equitably valued and classified by the trustees under this agreement, or by such persons as they shall appoint; and upon sale of said lands, said mortgage bonds may be received at par, and accrued interest, in payment therefor, and the bonds thus received in payment shall be immediately cancelled by cutting out the signature thereto. And said trust deed shall contain all other reasonable and proper provisions for making said lands the most productive and available to the company as a sinking fund for the payments of said bonds.

The trustees of said mortgage shall, immediately after any payment is made them, designate by lot so many of the bonds as they have money to pay, to which the sum received by them shall be applied in payment. They shall give notice of the numbers of the bonds designated, in two or more of the newspapers printed in the city of New York, and after the first day of the succeeding January or July in each year, the interest on the bonds so designated shall cease, and neither the company or their successors shall be any longer liable for the payment of the interest or principal thereof. Said trustees shall, on said first day of each January and July, pay the principal and interest of said bonds, and cancel and surrender the same to the company, and also the scrip certificate of stock accompanying said bonds.

The bonds thus to be issued and secured may have as a condition that in case of default of interest for six months, then the principal shall become due without demand or notice.

The bonds secured by said mortgage shall be convertible, at the option of the holder, into the preferred stock, at any time within ten days after any dividend shall have been declared and become payable on said preferred stock.

It shall be further provided, if the bondholders so elect, that the company shall issue, at the time of the delivery of each bond, ten shares of scrip stock, in the preferred stock for each $1,000
1064 bond, and five shares for each $500 bond, the certificate of which shall be so framed as to accompany each bond, which stock may be voted upon at all stockholders' meetings, but shall not be entitled to receive any dividends until the bond represented therein shall be surrendered and cancelled, and the surrender of the bond shall be considered the payment for the stock. And should any further legislation be required to authorize the bondholders to vote in this or some other suitable manner, the trustees under this agreement, or the new company, as the case may be, shall apply to the legislature of Wisconsin in good faith, to get the necessary authority.

The said trust deed shall also contain a provision, requiring so many of said $4,200,000 of bonds, as are reserved for the first mortgage eastern division, to be cancelled from time to time as the present sinking fund ($12,000 per annum) on said first mortgage eastern division bonds (886,000) shall have cancelled of that mortgage.

Third. Such of the assentents to said basis as surrender to said trustees, upon their request, the bonds of said railroad company known as second mortgage eastern division bonds, dated Sept. 1st, 1857, and maturing Sept. 1st, 1870, shall receive the new mortgage bonds of said new company at par, for eighty per cent. of the principal of said bonds, and the said preferred stock for the remaining twenty per cent. of principal, and they shall remit in favor of said new company all interest accrued upon said bonds thus surrendered.

Fourth. Such of the assentents as surrender to said trustees, upon their request, the bonds of said railroad company known as first issue land grants of $1,000 each, and numbered from 1 *a* 1991, inclusive, shall receive the new mortgage bonds of the new company at par for

the principal of their bonds, and for accrued interest, twenty-five per cent. upon the principal in said preferred stock—a proportional reduction to be made for over-due coupons not surrendered.

Fifth. Such of the assentents as surrender to said trustees,
1065 upon their request, the bonds of said railroad company known as medium issue land grants of $1,000 each, and numbered from 1992 to 2500, inclusive, shall receive the mortgage bonds of the new company at 40 per cent. of the principal; and the said preferred stock for 25 per cent. of the principal; the balance of principal and interest they shall remit in favor of said new company.

Sixth. Such of the assentents as surrender to said trustees, upon their request, the bonds of said railroad company, known as the Helfenstein mortgage, shall receive for said bonds 40 per cent. in said preferred stock, and the balance of the principal and interest they shall remit in favor of said new company.

Seventh. Such of the assentents as surrender to said trustees, upon their request, bonds of said railroad company known as second issue land grants, the $1,000 bonds numbered from 2501 to 3950, inclusive, and the $500 bonds numbered from 1 to 100, inclusive, shall receive 40 per cent. of the principal in said preferred stock, and 40 per cent. of the principal in said common stock, and the balance of principal and interest they shall remit in favor of the new company.

Eighth. The farm mortgage stockholders of said railroad company may receive 80 per cent. of the full amount of their old stock, in the common stock of the new company.

Ninth. The stockholders of the Milwaukee and Minnesota Railroad Company, except the farm mortgage stockholders of the La Crosse Company, who are provided for in the eleventh article hereof, if they transfer and surrender their stock upon request of said trustees to them, shall receive twenty per cent. of their Milwaukee and Minnesota railroad stock in the common stock of the new company at par.

Tenth. It is expressly understood and agreed, by all the parties in interest, that said trustees shall have the power to audit,
1066 reject, or allow, either in whole or in part, any bonds or claims assented hereto before the issuing of any certificate therefor.

Eleventh. No party shall be considered as having any claim upon the said trustees, or the benefits of this agreement, unless he or they shall surrender or assign to said trustees the bonds or claims held by said party against said railroad company, with all the unpaid coupons attached, previous to the sale of said road, or any part thereof, or whenever the trustees shall require the same by notice duly advertised or by circular, for which they shall receive, in the first instance, a trustee's certificate or receipt therefor, payable to bearer, and negotiable from hand to hand without endorsement; and, whenever he or they shall be requested, they shall surrender said certificate or receipt, and in lieu thereof, and in full satisfaction therefor, shall receive the mortgage bonds of the new company, and the different classes of stock of the same, both at the par value thereof, as herein provided.

Twelfth. The trustees and attorneys appointed under this agree-

ment shall not exceed seven in all, and they may resign their trust and position at any time; and, in case of any resignation or vacancy, caused by death, removal, or other inability or incapacity to act, the survivors may fill the vacancy. The said trustees or attorneys shall keep a true record of all their acts and doings under this agreement.

Thirteenth. It is agreed by all the assentents that, in carrying out any of the provisions of this agreement, said trustees or attorneys are hereby authorized, in relation to all matters, exigencies, and things not herein specifically provided for, to exercise a liberal discretion in the premises, and further, that a majority of said trustees or attorneys shall have power to act in all cases under this agreement.

Fourteenth. It is further agreed that, upon the written recommendation of six of the seven trustees herein named, and
1067 placed before any regular or special meeting of the assentents duly called, at which a majority in interest (as the same may then be) of each class of mortgage bondholders or their assigns assenting hereto shall be present, and voting in the affirmative, it shall be competent for said meeting to alter or modify this agreement, or any part thereof, and thereafter this agreement shall have the same effect in law and equity as if said alterations or modifications had been duly incorporated herein; but no assenter hereto, or his legal representative, shall become liable to pay any money (except at his option) by any such action unless he shall have voted therefor or assented thereto. At said meeting, and all other meetings of the assentents hereto, each mortgage bondholder, having surrendered his bonds to the trustees herein named, shall be entitled to one vote for each $1,000 of the principal of the bonds surrendered.

Fifteenth. Annual meetings of the assentents hereto shall be held in the city of New York in the month of October in each year, which meeting shall be called by said trustees or attorneys, who shall specify the time and place for holding the same; and at such meeting or at any special meeting duly called, they shall submit a full and specific statement of all their acts and proceedings under this agreement.

Sixteenth. It is agreed by all the assentents that the time within which mortgage bondholders and others can become parties to this agreement shall be limited to and include the first day of November, 1861; but this limitation may be extended by the trustees or attorneys elected hereunder if they deem it for the interest of the assentents so to do.

Notice shall be given, by advertisement or otherwise, of the general object of this agreement, and the time within which bondholders can become parties hereto, to the end that all parties interested in
1068 the road may have an opportunity to assent hereto, and secure to themselves the benefits hereof.

ISAAC SEYMOUR,
HORACE GALPEN,
BENJAMIN F. DAWSON,
FRANCIS VOSE,
FRED. P. JAMES,
WILLIAM GOULD,
D. M. HUGHES.

Recapitulation.

A second mortgage eastern division bondholder gets first mortgage bonds for 80 per cent., preferred stock for 20 per cent.—in all 100 per cent.

A land-grant bondholder, low numbers, (1 *a* 1991,) gets new 1st mortgage bonds at par, and for interest, $250 preferred stock.

A medium No. land-grant bondholder (Nos. 1892 *a* 2500) gets new 1st mortgage bonds for 40 per cent. of the principal, and $250 preferred stock—in all 65 per cent.

A high No. land-grant bondholder (2501 *a* 3950 of the $1,000 bonds, and No. 1 *a* 100 of the $500 bonds) gets 40 per cent. in preferred stock, and 40 per cent. in common stock—in all 80 per cent.

The office of the trustees is 29 William street, city of New York, (room 4) where they are prepared to receive the surrender of the bonds, and attend to the duties of their trust.

N. A. COWDREY, *Secretary.*

1069 SCHEDULE B.

[Referred to in the annexed complaint.]

Trustees' Certificate.—No. 389.

(For first issue 1 *a* 1991 land grant first mortgage bonds.) Issued pursuant to a plan dated September 3, 1861, and to an agreement dated October 3, 1861, for the purchase of the La Crosse and Milwaukie railroad, &c., and for the protection of the interest of certain assenting creditors.

Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis Vose, Frederick P. James. William Gould, and D. M. Hughes, trustees, do hereby certify, that, pursuant to said plan and agreement for purchasing the La Crosse and Milwaukie railroad and the real and personal property of that company, I. and R. Milbank has deposited with said trustees six (6) bonds of said company, known as the first issue land grant first mortgage bonds, dated February 1, 1857, and maturing February 1, 1877, amounting to six thousand ($6,000) of principal, with the unpaid coupons attached, from February 1, 1858, Nos. 932, 936, 938, 940, 946, 987, which bonds are to be used by said trustees in the purchase of said road, or any part thereof, at their discretion, and so much thereof as is not cancelled by said sale and purchase is to become the property of the company to be formed from or by the purchasers of said road, under the said agreement, whenever the new company are prepared to issue and deliver new bonds and stock, as set forth in said agreement.

This certificate, and the interest herein expressed, is issued, and is to be held and used, subject to the plan proposed in said basis of reorganization and said agreement, and thereunder entitles the said

I. and R. Milbank, or bearer, upon presentation and surrender,
1070 to a new mortgage bond of $1,000 of principal of the bonds,

and to fifteen shares of preferred stock of $100 each in said company for the unpaid coupons.

Representing amount in new bonds	$6,000
" " preferred stock, fifteen shares	1,500
Total	7,500

Nov. 22d, 1861.

I. SEYMOUR, *Chairman.*

N. A. COWDREY, *Secretary.*

SCHEDULE C.

[[Referred to in the annexed complaint.

Trustees' certificate.—No. 147.

(For second issue 2501 *a* 3950 of the $1,000 bonds, and 1 *a* 100 of the $500 bonds land grant first mortgage bonds.) Issued pursuant to a plan dated September 3d, 1861, and to an agreement dated October 3d, 1861, for the purchase of the La Crosse and Milwaukee railroad, &c., and for the protection of the interest of certain assenting creditors.

Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis Vose, Frederick P. James, William Gould, and D. M. Hughes, trustees, do hereby certify that, pursuant to said plan and agreement for purchasing the La Crosse and Milwaukee railroad and the real and personal property of that company, I. and R. Milbank has deposited with said trustees four (4) bonds of said company, known as second issue land grant first mortgage bonds, dated February 1st, 1857, and maturing February 1st, 1877, amounting to 4,000 dollars of principal, with the unpaid coupons attached, from February 1, 1858, (Nos. 2182, 2329, 2330, 2332,) which bonds are to be used by said trustees in the purchase of said road, or any part thereof, at their discretion, and so much thereof as is not cancelled by said sale and purchase is to become the property of the company to be formed from or by the purchasers of said road under the said agreement whenever the new company are prepared to issue and deliver new bonds and stock, as set forth in said agreement. 1071

This certificate and the interest herein expressed is to be held and used subject to the plan proposed in said basis of reorganization, and said agreement, and thereunder entitles the said I. and R. Milbank, or bearer, upon its presentation and surrender, to four shares of preferred stock of $100 each in said company for each $1,000 bond, and to four shares of the common stock of $100 each.

Representing amount in preferred stock	$1,600
" " common " sixteen shares	1,600
Total	3,200

Nov. 22d, 1861.

I. SEYMOUR, *Chairman.*

N. A. COWDREY, *Secretary.*

SCHEDULE D.

[Referred to in the annexed complaint.]

Trustees' certificate.—No. 197.]

(For second issue 2501 *a* 3950 of the $1,000 bonds, and 1 *a* 100 of the $500 bonds land grant first mortgage bonds.) Issued pur-
1072 suant to a plan dated September 3d, 1861, and to an agreement dated October 3d, 1861, for the purchase of the La Crosse and Milwaukee railroad, &c., and for the protection of the interest of certain assenting creditors.

Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis Vose, Frederick P. James, William Gould, and D. M. Hughes, trustees, do hereby certify, that, pursuant to said plan and agreement for purchasing the La Crosse and Milwaukee railroad and the real and personal property of that company, I & R. Milbank has deposited with said trustees nine (9) bonds of said company, known as second issue land grant first mortgage bonds, dated February 1st, 1857, and maturing February 1st, 1877, amounting to nine thousand ($9,000) dollars of principal with the unpaid coupons attached, from February 1st, 1858, Nos. 2835, 2848, 3235, 3558, 3643, 3829, 3882, 3938, 3950, which bonds are to be used by said trustees in the purchase of said road, or any part thereof, at their discretion, and so much thereof as is not cancelled by said sale and purchase is to become the property of the company to be formed from or by the purchasers of said road, under the said agreement, whenever the new company are prepared to issue and deliver new bonds and stock, as set forth in said agreement.

This certificate, and the interest herein expressed, is issued, and is to be held and used subject to the plan proposed in said basis of reorganization, and said agreement, and thereunder entitles the said I. & R. Milbank or bearer, upon its presentation and surrender, to four shares of preferred stock of $100 each in said company for each $1,000 bond, and to four shares of the common stock of $100 each.

Representing amount of preferred stock	$3,600
" " common stock, 36 shares	3,600
Total	7,200

November 22d, 1861.

I. SEYMOUR, *Chairman.*

N. A. COWDREY, *Secretary.*

1073 SCHEDULE E.

[Referred to in the annexed complaint.]

Trustees' Certificate.—No. 198.

(For second issue 2501 *a* 3950 of the $1,000 bonds, and 1 *a* 100 of the $500 bonds, land grant, first mortgage bonds.) Issued pursuant

to a plan, dated September 3d, 1861, and to an agreement, dated October 3d, 1861, for the purchase of the La Crosse and Milwaukee railroad, &c., and for the protection of the interest of certain assenting creditors.

Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis Vose, Frederick P. James, William Gould, and D. M. Hughes, trustees, do hereby certify that, pursuant to said plan and agreement for purchasing the La Crosse and Milwaukee railroad, and the real and personal property of that company, I & R. Milbank has deposited with said trustees two (2) bonds of said company, known as second issue land grant first mortgage bonds, dated February 1st, 1857, and maturing February 1st, 1877, amounting to one thousand ($1,000) dollars of principal, with the unpaid coupons attached, from February 1st, 1858, Nos. 5, 6, which bonds are to be used by said trustees in the purchase of said road, or any part thereof, at their discretion, and so much thereof as is not cancelled by said sale and purchase is to become the property of the company to be formed from or by the purchasers of said road, under the said agreement, whenever the new company are prepared to issue and deliver new bonds and stock, as set forth in said agreement.

This certificate, and the interest herein expressed, is issued, and is to be held and used subject to the plan proposed in said basis of reorganization, and said agreement, and thereunder entitles the said I. & R. Milbank or bearer, upon its presentation and surrender, to four shares of preferred stock of $100 each in said company, for each
1074 $1,000 bond, and to four shares of the common stock of $100 each.

Representing amount in preferred stock	$400
" " common " 4 shares	400
Total	800

November 22, 1861.

I. SEYMOUR, *Chairman.*

N. A. COWDREY, *Secretary.*

SCHEDULE F.

[Referred to in the annexed complaint.]

Trustees' certificate.—No. 348.

(For first issue 1 *a* 1991 land grant first mortgage bonds.) Issued pursuant to a plan, dated September 3d, 1861, and to an agreement, dated October 3d, 1861, for the purchase of the La Crosse and Milwaukee railroad, &c., and for the protection of certain assenting creditors.

Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis Vose, Frederick P. James, William Gould, and D. M. Hughes,

trustees, do hereby certify that, pursuant to said plan and agreement for purchasing the La Crosse and Milwaukee railroad and the real and personal property of that company, Oddie & St. George has deposited with said trustees five (5) bonds of said company, known as the first issue land grant first mortgage bonds, dated February 1st, 1857, and maturing February 1st, 1877, amounting to five thousand ($5,000) dollars of principal, with the unpaid coupons attached, from February 1st, 1858, Nos. 13, 31, 58, 60, 404, which bonds are
1075 to be used by said trustees in the purchase of said road, or any part thereof, at their discretion; and so much thereof as is not cancelled by said sale and purchase is to become the property of the company to be formed from or by the purchasers of said road, under the said agreement, whenever the new company are prepared to issue and deliver new bonds and stock, as set forth in said agreement.

This certificate and the interest herein expressed is issued, and is to be held and used, subject to the plan proposed in said basis of reorganization, and said agreement, and thereunder entitles the said Oddie & St. George, or bearer, upon its presentation and surrender, to a new mortgage bond of $1,000 of said new company for each $1,000 of principal of the bonds, and to $12\frac{50}{100}$ shares of preferred stock of $100 each in said company for the unpaid coupons.

Representing amount in new bonds	$5,000
" " preferred stock, $12\frac{50}{100}$ shs	1,250
Total	6,250

November 8, 1361.

I. SEYMOUR, *Chairman.*

N. A. COWDREY, *Secretary.*

SCHEDULE G.

[Referred to in the annexed complaint.]

Trustees' certificate.—No. 122.

(For medium issue 1992 *a* 2500 land grant first mortgage bonds.) Issued pursuant to a plan, dated September 3d, 1861, and to an agreement, dated October 3d, 1861, for the purchase of the La Crosse and Milwaukee railroad, &c., and for the protection of the interest of certain assenting creditors.

Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis
1076 Vose, Frederick P. James, William Gould, and D. M. Hughes. trustees, do hereby certify that, pursuant to said plan and agreement for purchasing the La Crosse and Milwaukee railroad, and the real and personal property of that company, Oddie & St. George has deposited with said trustees five (5) bonds of said company, known as the medium issue land grant first mortgage bonds, dated February 1st, 1857, and maturing February 1st, 1877, amounting to five

thousand ($5,000) dollars of principal, with the unpaid coupons attached, from February 1st, 1855, Nos. 1995, 2147, 2148, 2189, 2199, which bonds are to be used by said trustees in the purchase of said road, or any part thereof, at their discretion, and so much thereof as is not cancelled by said sale and purchase is to become the property of the company to be formed from or by the purchasers of said road, under the said agreement, whenever the new company are prepared to issue and deliver new bonds and stock, as set forth in said agreement.

This certificate, and the interest herein expressed, is issued, and is to be held and used, subject to the plan proposed in said basis of reorganization, and said agreement, and thereunder entitles the said Oddie & St. George, or bearer, upon its presentation and surrender, to a new mortgage bond of said new company for 40 per cent. of the bonds above surrendered, and to two and a half shares of preferred stock of $100 each in said company for each $1,000 bond.

Representing amount in new bonds	$2,000
" " preferred stock, $12\frac{50}{100}$ shares,	1,250
Total	3,250

November 8th, 1861.

I. SEYMOUR, *Chairman.*

N. A. COWDREY, *Secretary.*

1077 SCHEDULE H.

[Referred to in the annexed complaint.]

Trustees' Certificates.—No. 169.

(For second issue 2501 *a* 3950 of the $1,000 bonds, and 1 *a* 100 of the $500 bonds, land grant first mortgage bonds.) Issued pursuant to a plan, dated September 3, 1861, and to an agreement, dated October 3, 1861, for the purchase of the La Crosse and Milwaukee railroad, &c., and for the protection of the interest of certain assenting creditors.

Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis Vose, Frederick P. James, William Gould, and D. M. Hughes, trustees, do hereby certify that, pursuant to said plan and agreement for purchasing the La Crosse and Milwaukee railroad, and the real and personal property of that company, Oddie & St. George has deposited with said trustees fourteen (14) bonds of said company, known as second issue land grant first mortgage bonds, dated February 1, 1857, and maturing February 1, 1877, amounting to seven thousand ($7,000) dollars of principal, with the unpaid coupons attached, from February 1, 1858, Nos. 46, 47, 48, 49, 69, 70, 71, 72, 75, 76, 94, 95, 99, 100, which bonds are to be used by said trustees in the purchase of said road, or any part thereof, at their discretion, and so much thereof as is not cancelled by said sale and purchase is to become the property

of the company to be formed from or by the purchasers of said road, under the said agreement, whenever the new company are prepared to issue and deliver new bonds and stock, as set forth in said agreement.

This certificate, and the interest herein expressed, is issued, and is to be held and used, subject to the plan proposed in said basis of reorganization, and said agreement, and thereunder entitles the said Oddie & St. George, or bearer, upon its presentation and surrender, to four shares of preferred stock of $100 each in said company
1078 for each $1,000 bond, and to four shares of the common stock of $100 each.

Representing amount in preferred stock		$2,800
" " common "	28 shares	2,800
Total		5,600

November 8, 1861.

I. SEYMOUR, *Chairman.*

N. A. COWDREY, *Secretary.*

SCHEDULE I.

[Referred to in the annexed complaint.]

Trustees' certificate.—No. 535.

(For first issue 1 *a* 1991 land grant first mortgage bonds.) Issued pursuant to a plan, dated September 3d, 1861, for the purchase of the La Crosse and Milwaukee railroad, &c., and for the protection of the interest of certain assenting creditors.

Isaac Seymour, Horace Galpen, Francis Vose, Frederick P. James, William Gould, George Smith, of Chicago, and D. M. Hughes, trustees, do hereby certify that, pursuant to said plan and agreement for purchasing the La Crosse and Milwaukee railroad, and the real and personal property of that company, William Crawshay has deposited with said trustees three (3) bonds of said company, known as the first issue land grant first mortgage bonds, dated February 1st, 1857, and maturing February 1st, 1877, amounting to three thousand dollars of principal, with the unpaid coupons attached, from February 1st, 1858, Nos. 1073, 1074, 1075, which bonds are to be used by said trustees in the purchase of said road, or any part thereof, at their discretion, and so much thereof as is not cancelled by said sale and purchase is to become the property of the com-
1079 pany to be formed from or by the purchasers of said road, under the said agreement, whenever the new company are prepared to issue and deliver new bonds and stock, as set forth in said agreement.

This certificate, and the interest herein expressed, is issued, and is to be held and used, subject to the plan proposed in said basis of reorganization and said agreement, and thereunder entitles the said Crawshay, or bearer, upon its presentation and surrender, to a new mortgage bond of $1,000 of said new company for each $1,000 of

principal of the bonds, and to $7\frac{50}{100}$ shares of preferred stock, of $100 each, in said company for the unpaid coupons.

Representing amount in new bonds	$3,000
" " preferred stock, $7\frac{50}{100}$ shares	750
Total	3,750

June 3, 1862.

I. SEYMOUR, *Chairman.*

N. A. COWDREY, *Secretary.*

SCHEDULE J.

[Referred to in the annexed complaint.]

Trustees' certificate.—No. 272.

(For second issue 2501 *a* 3950 of the $1,000 bonds, and 1 *a* 100 of the $500 bonds, land grant first mortgage bonds.) Issued pursuant to a plan, dated September 3d, 1861, and to an agreement, dated October 3d, 1861, for the purchase of the La Crosse and Milwaukee railroad, &c., and for the protection of the interest of certain assenting creditors.

1080 Isaac Seymour, Horace Galpen, Benjamin Dawson, Francis Vose, Frederick P. James, William Gould, and D. M. Hughes, trustees, do hereby certify that, pursuant to said plan and agreement for purchasing the La Crosse and Milwaukee railroad and the real and personal property of that company, Wm. Crawshay has deposited with said trustees five (5) bonds of said company, known as second issue land grant first mortgage bonds, dated February 1st, 1857, and maturing 1st, 1877, amounting to five thousand (5,000) dollars of principal, with the unpaid coupons attached, from February 1st, 1858, Nos. 2994, 3249, 3250, 3253, 3255, which bonds are to be used by said trustees in the purchase of said road, or any part thereof, at their discretion, and so much thereof as is not cancelled by said sale and purchase is to become the property of the company to be formed from or by the purchasers of said road, under the said agreement, whenever the new company are prepared to issue and deliver new bonds and stock, as set forth in said agreement.

This certificate, and the interest herein expressed, is issued, and is to be held and used, subject to the plan proposed in said basis of reorganization, and said agreement, and thereunder entitles the said Crawshay or bearer, upon its presentation and surrender, to four shares of preferred stock of $100 each in said company for each $1,000 bond, and to four shares of the common stock of $100 each.

Representing amount in preferred stock	$2,000
" " common " 20 shares	2,000
Total	4,000

February 4, 1862.

I. SEYMOUR, *Chairman.*

N. A. COWDREY, *Secretary.*

1081 SCHEDULE K, *Referred to in the annexed complaint.*

NEW YORK, *July* 10, 1862.

Isaac Seymour, esq., chairman of trustees of certain creditors of the La Crosse and Milwaukee Railroad Company, under an agreement made Oct 3, 1861.

GENTLEMEN: Being informed that you are about to purchase the western division of the La Crosse and Milwaukee R. R. Co., at the approaching judicial sale, and to organize a new corporation, under the published plan of yours, dated October 3d, 1861, we propose upon the condition of your accepting the proposal of Selah Chamberlain, which please find herewith, that we will recommend the directors and stockholders of the Milwaukee and Western R. R. Co., to sell their road and all their property, real and personal, to you or to your new corporation, free from all liens and charges, at $1,800,000, including the present outstanding mortgage bonds on said Milwaukee and Western Railroad of $310,000 and $590,000 hereinafter stated, payable $1,700,000 in your mortgage bonds, and $100,000 in your preferred stock.

The mortgage under which the aforementioned bonds are to be issued, is to be for $4,200,000 on the said Milwaukee and Western R. R. Co's Road as now constructed, and to include the unbuilt link between Columbus and Portage City, (and which unbuilt link is to be constructed by the new company to be organized,) and also the present line of the La Crosse and Milwaukee railway from Portage City to La Crosse. The incumbrances against the said Milwaukee and Western railroad is a mortgage given to Washington Hunt and Alexander Mitchell, trustees, for $1,500,000, under which $590,000 of bonds have been issued in exchange for $918,000 of mortgage bonds against said road, and the mortgages under which said $918,000 of bonds were issued have been discharged of record, leaving $310,000 still outstanding of 8 per cent. bonds, secured by a mortgage executed by the Milwaukee and Watertown R. R.

1082 Co. to Isaac Seymour, trustee, and for the payment or exchange of those $310,000 of bonds, said Hunt and Mitchell hold $310,000 of the sinking fund mortgage bonds of the Milwaukee and Western Railroad Co. The remaining $600,000, provided for in said Sinking Fund Mortgage can only be issued in payment of or for the construction of certain pieces of railroad as named in said mortgage deed. Now, it is understood that the aforementioned outstanding bonds, amounting to $900,000, that we cannot at this time control, you are to hold in reserve a like amount of your mortgage bonds for the purpose of taking up the said outstanding bonds from time to time as they offer.

(Signed) A. NOXON.
RUSSEL SAGE.

SCHEDULE L, *Referred to in the annexed complaint.*

NEW YORK, *July* 10, 1862.

Isaac Seymour, esq., chairman of trustees of certain creditors of the "La Crosse and Milwaukee Railroad Co.," under an agreement made October 3, 1861:

GENTLEMEN: Being informed that you are about to purchase the western division of the "La Crosse and Milwaukee R. R.," at the approaching judicial sale, and to organize a new corporation under the plan proposed by you in your printed agreement, dated October 3, 1861, I propose to sell to you, or to the new corporation about to be organized by you, all my claims against the La Crosse and Milwaukee R. R. Co., except such 2d mortgage eastern division

bonds as I may have, and the Cleveland judgments, for the sum of five hundred thousand dollars ($500,000;) one hundred thousand dollars ($100,000) in your first mortgage bonds, two hundred thousand dollars ($200,000)
1083 in the preferred stock of your new corporation, and two hundred thousand dollars ($200,000) in cash, with interest from July 1, 1862, to be paid by you before the payment of any dividends on any class of stock. Your company to give me as evidence of this, two hundred thousand dollars income or floating debt bonds, in sums of one thousand dollars each; which shall be in every respect next in priority of right or liens to your first mortgage bonds, as proposed in your said agreement, and shall be paid from first net earnings of the road, after providing for the amount of interest on said first mortgage bonds, in monthly payments.

The balance due on the Cleveland judgment to be paid in the same manner as the aforementioned sum of two hundred thousand dollars, with the understanding that all parties in interest shall use their best efforts to have this judgment paid from the earnings of the eastern division of the "La Crosse railroad," the present season; interest at seven per cent., on payment, to be paid semi-annually.

It is understood that my claim is to be placed in the hands of Alexander Mitchell, esq., of Milwaukee, as trustee, who shall hold the same for my benefit until I am fully paid.

This proposition, and your acceptance thereof, is dependent upon your agreeing with and acquiring the road of the Milwaukee and Western R. R. Co.

Respectfully, your obt. servt.,

(Signed) S. CHAMBERLAIN.

SCHEDULE M, *Referred to in the annexed complaint.*

1st. *Resolved*, That we will recommend the new corporation, our successors, to accept the written propositions of Russell Sage, esq., and A. Noxon, relating to the Milwaukee and Western R. R., with such guarantees, provisos, and limitations as counsel shall advise for our safety or protection.

1084 2. *Resolved*, That we will recommend the new corporation, our successors, to accept the written proposition of Selah Chamberlain for the sale of his claims against the La Crosse and the Milwaukee and Western Railroad Companies, with such guarantees, provisos, and limitations as counsel shall advise for our safety and protection, upon condition that he shall get his claims established by judgment of the United States district court for the district of Wisconsin for an amount of not less than $400,000 at his own costs and charges, and that interest shall commence on the $200,000, to be paid him in floating debt bonds from the date of the confirmation of judgment of court of the amount due him; and that when said judgment is obtained, he will assign and transfer said judgment to said new corporation; and that said judgment shall be a lien upon the eastern division of the La Crosse railroad next after the Cleveland judgment, which Cleveland judgment shall be next lien after the 2d mortgage eastern division.

SCHEDULE N, *Referred to in the annexed complaint.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, began and held according to law, at the city of Milwaukee, in the said district of Wisconsin, on the first Monday (being the third day) of January, A. D. 1859.

Present—The Hon. Andrew G. Miller, judge of said court presiding.

On the twenty-first day of said term, to wit, on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

1085 NEWCOME CLEVELAND,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Selah Chamberlain. } In equity.

This day came the parties by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, is thereupon ordered, adjudged, and decreed by the court that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property, (except such as is used on the Milwaukee and Watertown division of said railroad,) and leased to said Chamberlain the said railroad and appurtenances, rights, franchises, and privileges, be and hereby is vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever.

And that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling or meddling with said railroad, or the rolling stock, personal property, or any of its appurtenances or franchises, or anything connected therewith, under or by virtue of said article of agreement.

And it is further ordered, adjudged, and decreed, by the court, that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company, entered in the court on the second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon, be and hereby are vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

And it is further ordered, adjudged, and decreed, by the court, that the said defendant, Selah Chamberlain, pay the costs to be taxed so far as they
1086 accrued in this proceeding against him; and that he pay the same within twenty days, or in default thereof, an execution be issued against him for the same.

And as the lease and assignment of the said company to D. C. Freeman, has expired by its own limitation, it is further ordered, adjudged and decreed by the court, that the defendant, D. C. Freeman, pay the costs to be taxed, so far as they accrued in this proceeding against him, within twenty days, or in default thereof an execution be issued against him for the same.

And it is further ordered, adjudged, and decreed by the court, that the La Crosse and Milwaukee Railroad Company pay the costs to be taxed, so far as they accrued in this proceeding against it, within twenty days, or in default thereof an execution be issued against it for the same.

And it is further ordered, that reference be and hereby is made to a master of this court to ascertain and report the annual income of the several lots described in the bill as having been conveyed to Moses Kneeland and James Ludington, from the time of their said purchase, together with the interest thereon. And also to ascertain and report the amount of the actual cost of permanent improvements made on said lots by said Kneeland and Ludington, together with interest thereon; and also the amount of liens and taxes on said lots that have been paid by said Kneeland and Ludington, or by C. D. Nash for them, together with interest on the same. And that this bill be retained for further decree and proceedings after the coming in of said report.

It is ordered by the court that in case of appeal by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supersedeas shall be given, and filed with sufficient sureties, to be approved by the court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

1087 SCHEDULE O, *Referred to in annexed complaint.*

At a meeting of the La Crosse and Milwaukee railroad bondholders, parties to an agreement made October 3d, 1861, held October 29th, 1862, the following resolutions were unanimously recommended by the trustees—altering and modifying the said agreement of October 3d, 1861—and were, by the meeting, ordered to be printed, and their consideration postponed until November 6, 1862, at one o'clock, to which time said meeting adjourned.

Resolved, That the agreement made by us on the 3d day of October, 1861, in accordance with the written recommendation of six out of seven trustees therein named, be and hereby is altered and modified, in pursuance of the fourteenth section of said agreement, in the manner following, viz:

1st. That if the company acquire the road of the Milwaukee and Western Railroad Company, commonly called the Watertown road, then said mortgage may be for $2,000,000 additional.

And if the company acquire the road of the Milwaukee and Horicon Railroad Company, then said mortgage may be for $400,000 additional.

2d. And for the purpose of authorizing the bondholders to vote, the company may issue scrip preferred stock to the same amount that it issues mortgage bonds to accompany said bonds, and full paid preferred stock and common stock to the amounts heretofore provided in the agreement; and for the purpose of acquiring the Milwaukee and Horicon railroad, they may issue $400,000 of full paid preferred stock and $250,000 of full paid common stock in addition to the amounts above provided.

3d, That such of the holders of the Milwaukee and Horicon railroad first mortgage bonds, a first lien on that road from Horicon to Berlin, as surrender their said bonds to the trustees hereunder, shall receive new mortgage
1088 bonds of said new company at par, for the principal of their bonds, and preferred stock of said company for the interest due thereon up to January 1, 1863.

4th. That such of the holders of the city of Milwaukee bonds issued to or in aid of the Milwaukee and Horicon Railroad Company, as shall surrender them to the trustees hereunder, shall receive preferred stock of said new company for the principal and interest of their bonds up to January 1st, 1863.

5th. That the balance of the unappropriated preferred stock and common stock issued for the purchase of the Horicon railroad may be used at the discretion of the said trustees in settlement of any liens on said consolidated property.

Proposed basis for reorganizing the La Crosse and Milwaukee R. R. Co.; the Milwaukee and Western R. R. Co., (commonly called *the Western road*); *the Milwaukee and Horicon R. R. Co., under amended agreement of October 3*, 1861.

Sell the roads, (except the Watertown R. R.,) under decrees of foreclosure.

Let them be purchased for the benefit of creditors assenting hereto, and assenting farm mortgage stockholders.

Form a new company to be called the Milwaukee and St. Paul Railway Company.

This company to make a new clean first mortgage over the consolidated property of the old companies of not exceeding	$6,600,000
To issue preferred stock not exceeding	3,400,000
To issue common stock	2,250,000
Cost of property (343 miles of R. R.)	$12,250,000

Subdivision among creditors of the old companies:

1089 A land grant bondholder, No. 1 *a* 1991, to get new first mortgage bonds for principal at par	1,000
And for his interest in preferred stock	250
A land grant bondholder, No. 1,992 *a* 3,950 of the $1,000 bonds, and 1 *a* 100 of the $500, to get in preferred stock, for principal and interest	400
In common stock	400

A first mortgage bondholder, eastern division, will get new mortgage bonds for his principal, and cash for the interest due him.

A holder of the city of Milwaukee bonds issued to the La Crosse R. R., will get new mortgage bonds for his principal, and cash for his interest.

A holder of city of Milwaukee bonds issued to the Horicon railroad, to get preferred stock for principal and interest up to January 1, 1863.

A second mortgage eastern division bondholder to get new first mortgage bonds for 80 per cent	$800
And preferred stock for the balance due up to September 1, 1862, say	480
A Horicon first mortgage bondholder to get for his principal a new mortgage bond	1,000
For his interest, preferred stock, say	280

A Milwaukee and Minnesota stockholder to get for his stock 20 per cent. in common stock.

A Helfenstein mortgage bondholder to get for principal and interest, in common stock, 25 per cent.

A farm mortgage stockholder or bondholder to get, for the principal and interest, for the bond, in common stock, 80 per cent.

1090 In the supreme court, city and county of New York.

WILLIAM CRAWSHAY and others, *vs.* ISAAC SEYMOUR and others. } 2d Affidavit of F. Vose. Dec. 23d, 1862.

CITY AND COUNTY OF NEW YORK, *ss.*:

Francis Vose, of said city, one of the plaintiffs in the foregoing complaint named, and the agent and attorney of William Crawshay, another of said plaintiffs, in respect to the matter of his interest in this action, being duly sworn, deposeth and saith: That he knows to be true all the allegations in said complaint contained, which are therein positively alleged, and that all the matters which are therein stated to be upon information and belief, he believes to be true, and that his knowledge and the grounds of his belief in regard to such matters are derived from a long and intimate acquaintance on his part with the affairs of the La Crosse and Milwaukie Railroad Company, as a creditor, bondholder, and trustee under the agreement of October third, 1861, and as to what occurred at the meetings alleged to have been held in New York, on the twenty-

ninth of October, and the sixth of November, 1862, from parties who were present at said meetings.

F. VOSE.

Sworn to this 23d day of Dec., 1862, before me,

JAMES W. MONK,
Notary Public, New York City.

1091 In the supreme court, city and county of New York.

WILLIAM CRAWSHAY and others, *vs.* ISAAC SEYMOUR and others. } 2d Affidavit of Oddie. Dec. 23, 1862.

CITY AND COUNTY OF NEW YORK, *ss.:*

Orville Oddie, of said city, one of the plaintiffs in the foregoing complaint named, being duly sworn deposeth a..d saith: That he was present and took part in the meetings which in said complaint are alleged to have been held in the city of New York on the twenty-ninth of October, 1862, and the sixth day of November, 1862, respectively, and knows that the allegations of said complaint as to what took place at said meetings are true.

ORVILLE ODDIE.

Sworn to before me this 23d December, 1862.

JAMES W. MONK,
Notary Public, New York City.

Supreme court, city and county of New York.

WILLIAM CRAWSHAY, FRANCIS VOSE and others, *agst.* ISAAC SEYMOUR and others. } Affidavit of N. A. Cowdrey. Dec. 30, 1862.

CITY AND COUNTY OF NEW YORK, *ss.:*

1092 Nathaniel A. Cowdrey, being sworn, says: That he is one of the defendants in the above-entitled cause, and one of the trustees under the creditors' agreement of October 3d, 1861, set forth in the complaint as Schedule "A;" that the other trustees thereunder are the defendants, Seymour, Galpen, Gould, Hughes, James, and Russell Sage, elected in place of the plaintiff Vose, who was expelled from said office of trustee by the creditors, parties to said agreement, at a meeting held October 29, 1862, as shown by the annexed extract from their records marked 1; that deponent is the secretary of said trust, and has had the chief management thereof, and since July 11th, 1862, the time when said proposition for the sale and purchase of said Watertown railroad were submitted to us, he has attended every meeting of said trustees both there and in Wisconsin. That said trustees have made no bargain for the purchase of said Horicon railroad, and have no intention of doing so, and they now and here disclaim and deny all intention of purchasing said railroads, or either of them, as trustees under said agreement.

That it is true as stated in the complaint, schedules "K," "L," and "M," that written propositions were made to said trustees to purchase said Watertown railroad, and said Chamberlain's liens on said La Crosse railroads, and also on said Watertown road, both roads having formerly been owned by the same corporation, and said Chamberlain claiming to have judgments which are liens on both roads. That said trustees did pass resolutions, as shown in schedule "M" of the complaint, whereby they resolved they would recommend somebody else, viz., their successors, to purchase said Watertown railroad and said Chamberlain's judgments, but that both said Watertown road and said Chamber-

lain refused to comply with the conditions named in said resolutions, and withdrew their propositions, whereupon at a meeting of said trustees held July 23, 1862, they revoked said resolutions passed July 10, 1862, and set out in schedule "M" of the complaint, a copy of which resolutions revoking the former are hereto attached, marked 2. That the deponent is ignorant of said Vose ever having threatened to make said resolutions known, and never heard of said threats until read in complaint, (folio 80–82;) that neither the depo-
1093 nent or the other trustees have anything to conceal or withhold concerning the management of this trust; that they keep a true and faithful record of all their acts and doings for the inspection of the bondholders, as required by the agreement, article 12, folio 153 of the complaint, and have at all times freely shown the same to every one desiring to see the same.

That deponent has no interest, direct or indirect, in said Watertown road, and from information and belief he testifies that none of the other of his associate trustees have, except said Sage, who has mortgage bonds on the same, the interest of which is promptly and fully paid, and except said Seymour, who is trustee of a mortgage on said road, the interest of which is fully paid, and no forfeiture incurred thereon.

That from the time of said withdrawal of the propositions for the sale of said Watertown road, and since the rescinding of said resolutions, July 22, 1862, the subject matter of the purchase of said Watertown road has never been before said trustees, nor have they ever taken any action thereon, and as above set forth do not expect to take any action thereon, and have no intention of doing anything about said purchase as said trustees.

That the bondholders, as they had the right to do, as shown on folios 155 and 156 of the complaint, authorized said defendants to purchase said Watertown road, and also said Horicon road, a copy of which authority is hereto annexed, marked "3," but that defendants have not purchased said road, and do not, as trustees, intend to do so.

That the subject matter of the purchase of the Horicon railroad has never been before them, except with a view of getting authority from the bondholders to do so if any contingency should arise by which it became desirable to do so.

No such contingency has arisen, or is likely to arise, during the existence of this trust. That they accepted employment from the bondholders, parties to said agreement, for the purpose of saving something for them from the disastrous effects of a complicated litigation, and in pursuance of that object said defend-
ants, Seymour, James, and Cowdrey purchased the western division of
1094 said La Crrosse Railroad Company, October 2, 1862, at $2,100,000, which they paid into court as follows: in bonds, $2,019,895$\frac{4}{5}$; in cash, $80,104$\frac{57}{100}$; that they paid said money into court out of their own pockets with the aid of defendant Hughes, all of which is more fully shown by the printed opinion of the United States district judge of Wisconsin, a copy of which is hereunto annexed, marked 4.

That by said opinion of said district judge, it appears that the motion to confirm the sale was made at a special term of said court, held in October, 1862, and that a "decree will be prepared *before* the January term for the action of the court, setting aside the sale of the lands and confirming the sale of the road." That deponent hereby, on his own behalf, and on behalf of the trustees, defendants in this case, tenders to said plaintiff each and every bond deposited by them with deponent, or with said trustees; that the bonds themselves are in the custody of the United States marshal for the district of Wisconsin, but that he and they will withdraw the same and restore them to said plaintiffs upon the return to him of the receipts and certificates given therefor.

This deponent denies, upon information and belief, that said Francis Vose is the attorney or agent of said William Crawshay, for the purposes of this suit. That so far as said Crawshay's interest in said road is concerned, the defend-

ants, Seymour, Galpen, Cowdrey, James, Gould, Hughes, and Sage, are the attorneys in fact and in law of said Crawshay, and, as deponent believes, are his only attorneys in this country having authority to act in this matter.

He also denies that theplaintiffs, Vose and Oddie and St. George, are owners or holders of any of said bonds; that complaint does not allege said Vose to be a bondholder, and only alleges said Oddie and St. George to be holders (not owners) of said bonds; that he believes neither said Vose or said Oddie and St. George have any interest in said subject-matter, except that said Vose has a pretended claim against said La Crosse and Milwaukee Railroad Company, amounting, as he says, to more than $800,000, which said defendants believe to be wrongful, and have refused to recognize it, for the reason that the agreement under which they act does not authorize the allowance of any such claims
1095 to be liens on the property; that said Vose has at various times and places tried by corrupt and collusive means to fasten his said pretended claim upon said property, and has offered various parties an interest in it if they would get it allowed by said defendants.

That said defendants are acting as trustees and attorneys of certain assenting claimants, mortgage creditors of the La Crosse and Milwaukee Railroad Company, in number near 300, in nominal amount about $8,200,000; that their authority to so act is in writing and strictly limited; that they, the defendants, are individually and pecuniarily responsible for any breach of trust or injury to the rights of others, and, as he believes, are in the aggregate fully able to respond to the full amount under their control, viz., $8,200,000. That their pecuniary interest, and that of their friends in this particular property, is larger than all the other bondholders combined; that, so far as they know or believe, all the bondholders except complainants are content to have them manage the property.

That the whole matter of this property is, and since 1859 has been, in litigation in the federal courts of Wisconsin and the Supreme Court at Washington; that the plaintiffs named in this suit are parties in the suits there; that said federal courts have full and complete jurisdiction of the matter pertaining to the sale of said premises, the purchase and confirmation thereof, and the giving and accepting a deed thereof.

That this court has no jurisdiction in or over the matters pending in the United States Supreme Court at Washington, or in the United States circuit court, Wisconsin.

That said federal court has ordered said property sold, and in pursuance of said order, said Seymour, James, and Cowdrey purchased the same October 2, 1862, and paid into court, as required by the decree, the sum of $2,100,000 therefor; that until they can get the deed of said premises, the premises cannot come into their possession as owners; that the income of said property is large, near $1,200,000 per annum.

That from October 3, 1861, until he was expelled, October 29, 1862, the plaintiff Vose was one of said trustees, as alleged in said complaint; that
1096 while a trustee he tried both Chamberlain and Sage, to get them to take in his before-mentioned pretended claim, and to increase their price for the premises offered us so that he, Vose, might get his pretended claim, or a portion of it; that deponent is informed and believes, he has colluded with various parties antagonistic to the interest of the creditors formerly represented by said Vose.

That he aided them in getting an injunction from the State court of Wisconsin to stay the sale; that deponent believes he aided in getting Congress to pass a law postponing the courts.

That from his knowledge of said Vose, and from information and belief, deponent thinks and charges that this complaint is for the purpose of compelling the

owners of said property to pay said Vose's pretended claim of more than $800,000.

That if said injunction stands, great injustice will be done a large number of innocent persons interested in said property.

That said U. S. circuit court for the district of Wisconsin has published an opinion hereto annexed, marked 3, in which they say that said sale will be confirmed on said 5th day of January next, the day this injunction order is made returnable; that it is absolutely necessary for the defendants to be at Milwaukee on that day to take possession of their property, and to give the proper directions for the employment of near 300 employés of said railroad.

If the sale is confirmed, as that court has already said it would be on that day, and we not there to take possession, great confusion and perhaps positive distress would be caused among a large number of laborers now entirely dependent upon said road for subsistence.

That as shown in folios 130, 133 and 154 of the complaint, said trustees may and are authorized to act by a majority concurring in the act; that whether said Vose is or is not a trustee, or acts or refuses to act with them, is not material if a majority of the whole number do act.

That said trustees have as yet done no act that has not had the unanimous concurrence of all the trustees present; that since Vose was expelled by the bondholders at said meeting, held October 29, 1862, he has wholly ab-
1097 sented himself from the business of this trust, except to oppose them in all possible ways, and has never offered to come to meetings of said trustees.

That the said trustees as yet have never witheld any information from him or others interested; that they keep a record of all their doings, which they are ready to produce to any one having an interest at any time.

That said Francis Vose, who makes affidavit to the complaint, folios 66 and 70, and to schedule K, knew at the time of making such affidavit that the lien on the Watertown road, in all $900,000, on which all interest now due is fully paid, were correctly set forth in said schedule K; that his means of information were the certificate of counsel at Milwaukee, who had been employed by another corporation to examine the title, which certificate was, on or about the 10th day of July, 1862, placed in the hands of said Vose for his examination, and that the statements given in the complaint, folios 66 and 70, are false in fact.

N. A. COWDREY.

Sworn before me this 30th day of December, 1862.

E. D. MILLS,
Notary Public, New York City.

EXHIBIT 1, *Attached to affidavit of N. A. Cowdrey.*

At a meeting of the La Crosse and Milwaukee railroad bondholders, parties to an agreement made October 3d, 1861, held at New York, October 29, 1862, in pursuance of the foregoing notice, at which it was found by the meeting that a majority of all classes of bondholders parties to said agreement were present—

George A. Townsend, esq., was appointed chairman, and H. E. Glassford, secretary.

The following resolution was offered by N. A. Cowdrey, esq., for the consideration of the meeting, and, after full explanation, was adopted:

Whereas Francis Vose accepted the fiduciary position of our trustee and attorney, to carry into effect our agreement dated October 3d, 1861, and
1098 has acted against our interest in trying to get our mortgage enlarged or diluted by the addition of his own private claim of more than $800,000 as part and parcel of our mortgage; in endeavoring to prevent the confirmation

of the sale when made; in furnishing our opponents information for them to base affidavits upon, acquired by him as our agent and trustee; in commencing and continuing suits against our interest: Therefore,

Resolved, That said Francis Vose be, and hereby is, removed from his position as our trustee and attorney under said agreement, and that he no longer have any authority to do any act for us.

EXHIBIT 2, *Attached to affidavit of N. A. Cowdrey.*

NEW YORK, *July* 22, 1862.

Trustees met.

Present: Messrs. Seymour, Cowdrey, Galpen, Hughes, James and Vose.

The record of the last meeting approved.

On motion of F. P. James it was—

Resolved, That whereas Russell Sage and A. Nixon have notified us in writing that they have withdrawn their proposition relating to the sale of the Watertown road to us or to our successors—

And whereas Selah Chamberlain has not accepted the conditions made by us in our resolution relating to his proposition to sell to us or to our successors his claims against the La Crosse and the Watertown roads—

We do therefore and hereby rescind and revoke our resolutions passed at our last meeting relating to their propositions, and we do hereby declare that we will be no longer bound by them.

That the secretary be hereby directed to send to said Sage, Nixon and Chamberlain copies of this resolution.

EXHIBIT 3, *Attached to affidavit of N. A. Cowdrey.*

At a meeting of the La Crosse and Milwaukee railroad bondholders, parties to an agreement made October 3, 1861, held October 29, 1862, the fol-
1099 lowing resolutions were unanimously recommended by the trustees—altering and modifying the said agreement of October 3, 1861—and were by the meeting ordered to be printed, and their consideration postponed until November, 1862, at one o'clock, to which time said meeting adjourned.

Resolved, That the agreement made by us on the 3d day of October, 1861, in accordance with the written recommendation of six out of the seven trustees therein named, be, and hereby is, altered and modified in pursuance of the fourteenth section of said agreement, in the manner following, viz:

1st. That if the company acquire the road of the Milwaukee and Western Railroad Company, commonly called the Watertown road, then said mortgage may be for $2,000,000 additional.

And if the company acquire the road of the Milwaukee and Horicon Railroad Company, the said mortgage may be for $400,000 additional, and the trustees hereunder are hereby authorized to purchase or lease either of said roads.

2d. And for the purpose of authorizing the bondholders to vote, the company may issue scrip preferred stock to the same amount that it issues mortgage bonds to accompany said bonds, and full paid preferred stock and common stock to the amounts heretofore provided in the agreement; and for the purpose of acquiring the Milwaukee and Horicon R. R., they may issue $400,000 of full paid preferred stock, and $250,000 full paid common stock in addition to the amounts above provided.

3d. That such of the holders of the Milwaukee and Horicon railroad first mortgage bonds, a first lien on that road from Horicon to Berlin, as surrender their said bonds to the trustees hereunder, shall receive new mortgage bonds of

said new company, at par for the principal of their bonds, and preferred stock of said company for the interest due thereon up to January 1, 1863.

1100 4th. That such of the holders of the city of Milwaukee bonds issued to or in aid of the Milwaukee and Horicon R. R. Co., as shall surrender them to the trustees hereunder, shall receive preferred stock of said new company for the principal and interest of their bonds up to January 1, 1863.

5th. That the balance of the unappropriated preferred stock and common stock issued for the purchase of the Horicon R. R. may be used at the discretion of the said trustees, in settlement of any liens on said consolidated property.

Proposed basis for reorganizing the La Crosse and Milwaukee R. R. Co., the Milwaukee and Western R. R. Co., (commonly called the Watertown road,) the Milwaukee and Horicon R. R. Co., under amended agreement of October 3, 1861.

Sell the roads (except the Watertown R. R.) under decrees of foreclosure. Let them be purchased for the benefit of creditors assenting hereto, and assenting farm mortgage stockholders.

Form a new company to be called the Milwaukee and St. Paul Railway Company.

This company to make a new clean first mortgage over the consolidated property of the old companies of not exceeding....	$6, 600, 000
To issue preferred stock not exceeding.....	3, 400, 000
To issue common stock.....	2, 250, 000
Cost of property (343 miles of R. R.).....	12, 250, 000

Subdivisions among creditors of the old companies:

A land grant bondholder, No. 1 *a* 1991, to get new first mortgage bonds for principal at par, $1,000; and for his interest in preferred stock, $250.

A land grant bondholder, No. 1992 *a* 3950 of the $1,000 bonds, and 1 *a* 100 of the $500, to get in preferred stock for principal and interest, $400; in common stock, $400.

1101 A first mortgage bondholder, eastern division, will get new mortgage bonds for his principal, and cash for the interest due him.

A holder of city of Milwaukee bonds issued to the La Crosse R. R., will get new mortgage bonds for his principal, and cash for his interest.

A holder of city of Milwaukee bonds issued to the Horicon R. R. to get preferred stock for principal and interest up to January 1, 1863.

A second mortgage eastern division bondholder to get new first mortgage bonds for 80 p. c., $800; and preferred stock for the balance due up to September 1, 1862, say $480.

A Horicon first mortgage bondholder to get for his principal a new mortage bond, $1,000; for his interest, preferred stock, say $280.

A Milwaukee and Minnesota stockholder to get for his stock 20 per cent. in new common stock.

A Helfenstein mortgage bondholder to get for principal and interest in common stock, 25 per cent.

A farm mortgage stockholder or bondholder to get, for the principal and interest, for the bond, in common stock, 80 per cent.

[Here follows map, see original p. 1102.]

Exhibit 4.—Attached to the affidavit of N. A. Cowdrey.

1103 In the Circuit Court of the United States, for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees, &c.
vs.
THE LA CROSSE and MILWAUKEE RAILROAD COMPANY, and others.

Opinion of Miller, United States District Judge, October 6, 1862.

Miller, District Judge.—The marshal made report of the sale of the land grant included in the mortgage, at the sum of one hundred thousand dollars, and of the railroad and appurtenances mortgaged, at the sum of one million seven hundred thousand dollars, to Isaac Seymour, Frederick P. James, and N. A. Cowdrey; and that these purchasers paid to him, in addition, on the sale of the road, three hundred thousand dollars. The whole sum of two millions one hundred thousand dollars was paid in the bonds secured by the mortgage, except eighty thousand one hundred and four dollars and fifty-seven cents, which was paid in money.

Exceptions to the sale, and motions to set it aside, were filed on behalf of the Milwaukee and Minnesota Railroad Company, the bondholders of the Helfenstein mortgage, Francis Vose, and others; and were argued with ability.

The objections to the confirmation of the sale of the lands at this time, I think, should be sustained. The lands have not been designated by the government according to the directions of the grant of Congress. The roadway through the lands has not been permanently located, which is the guide for the designation of the lands. The act of the State legislature conferring the lands on the La Crosse and Milwaukee Railroad Company, in essential parti-
1104 culars, does not conform to the conditions and restrictions of the grant, which confines the legislature to the only method therein directed for disposing of the lands. The mortgage of the lands by the company could not make a different disposition of them from that expressly directed by the grant. I think additional legislation upon the subject of the grant is necessary, which the confirmation of this sale might embarrass. And I think also that the refusal of the court to confirm the sale of the lands would promote the interests of the creditors of the company. Some of these matters have been brought specially to my notice since the date of the decree. The sale of the lands will not be confirmed.

It is contended that if the sale of the lands is not confirmed the sale of the road cannot be, according to the directions of the decree. The decree directs that the mortgaged premises, or so much thereof as will pay the interest then due, with interest and costs, be sold at public auction by the marshal, unless there be paid into court eight hundred and ninety-six thousand six hundred dollars and eighty-nine cents, and interest thereon. The decree further directs, that the lands granted by the United States be first sold, and if the proceeds of the sale thereof shall be sufficient to pay and discharge the said sum of $896,600\frac{89}{100}$, with interest from this date, and costs; or if the said sum be released or satisfied, or paid into court, further proceedings under the decree shall be stayed. The money was neither released nor paid; nor did the amount bid for the lands reach the sum necessary to stay the sale of the road. It is not pretended or proven that the lands could be sold for a greater sum than was bid for them at the sale. It is now evident that the bondholders will not release the said sum, which was the interest on their bonds as fixed by the de-

cree, nor bid for the lands a sufficient amount to extinguish it. The word *sold* in the decree, has to be understood in its common and business sense, as the marshal did understand it. He was ordered to sell the road if the lands were not bid up to cover the required price to stay the sale. The decree does not contemplate a confirmation of the sale of the lands before selling the road. The marshal followed the decree. The lands and the road being distinct
1105 pieces of property, the sale of the one may be set aside, and of the other confirmed.

The decree orders that the purchasers of the mortgaged premises at such sale be let into the possession thereof, to the extent allowed and granted by the said mortgage. The road and appurtenances being at the time in possession of the court by its receiver, the decree was carefully drawn so as not to remove the receiver without a special order of court. All that need be said, if anything, on the subject, was said in the decree; for the purchasers could not claim for more than the mortgage granted. It was not necessary to insert this much in the decree. It might have been omitted until the order of confirmation of the sale; and even then leaving the purchaser to his legal rights. There was nothing prejudicial to the interests of the parties in this part of the decree. The decree was final and conclusive.

It is objected to the confirmation that complainants and their counsel were enjoined, by order of a State judge, from making the sale. It is not proven that the service of the injunction deterred persons from bidding at the sale, or that the property was sold for any less amount in consequence of the injunction. This court had the first jurisdiction of the controversy between complainants and Helfenstein, as trustee, who appeared here and answered. A suit was then commenced in the Dane county circuit, to foreclose on the Helfenstein mortgage, making these complainants party defendants, who there appeared and pleaded the previous proceedings in this court. That suit is right enough for the purposes of a decree for the sale of lands not embraced in complainants' mortgage. These complainants, or their attorneys, cannot be made subject to an injunction from the State court against prosecuting the decree of this court. Where there is concurrent jurisdiction, the court in which the jurisdiction first attached must proceed in the case to the end, and other courts cannot interfere. (Taylor *vs.* Conyl, 20 Howard, 583, and many other cases not necessary to refer to.) One court cannot enjoin or restrain the proceedings of another court of concurrent jurisdiction, and an injunction against parties or their attor-
1106 neys is an injunction against the court. (Diggs *vs.* Wolcott, 4 Cranch, 179; McKim *vs.* Voorhies, 7 Cranch, 279.) The opinion of the Supreme Court of the United States, in the Booth case, 21 Howard, 506, is instructive on the subject of conflict of courts. The attorneys and marshal were perfectly right in proceeding with the sale.

If the service of the injunction had by possibility deterred bidders, it was not the fault of the complainants or the purchasers. There was just such a case in this court Joel Woodbury brought a bill in this court to foreclose a mortgage against Nicholas, the mortgagee, and Currie, the owner of another mortgage of the same premises. Currie appeared, and in his answer pleaded and exhibited the record of Dane county circuit of his previous bill pending; and Woodbury's bill was dismissed, notwithstanding he was a citizen of the State of Vermont, and had only been notified as a defendant of the proceeding in that court through the post office and by advertisement. I held then, as I hold now, that one court of concurrent jurisdiction cannot draw into it the suitors of the other court.

The objection to the confirmation that the sale should not be made during the pendency of the appeal to the Supreme Court of the United States on behalf of the Helfenstein mortgage only requires the answer, that, there being no bond for a supersedeas, the law and the rules of that court allow this court no discretion in the matter.

A scheme of re-organization under the laws of the State, and of the amounts of shares or interests to be allowed the several lien creditors, is presented to the court as proof of a combination to prevent competition at the sale. The scheme could not prevent the several objectors from bidding. They were not bound by it against their consent. "Any combination or confederation of persons for the purpose of preventing competition at an auction sale, and depressing the price of the property below the fixed market value, is voidable, on the ground that it is a fraud upon the seller, as well as against public policy, and tending injuriously to affect the character and value of sale by auction. But if the association of bidders is formed for a just and honest purpose, and do not conflict with the rights and interests of the seller; and if it be for the purpose of enabling persons to purchase together what they could not purchase separately, their agreements will be valid as being no fraud on the public, while it is a positive advantage to the seller." (Story on sales, § 484.) In Kenny *vs.* Taylor, 15 Howard, 494, the same principle is established. And in Oliver *vs.* Piatt, 3 Howard, 333, the court decides that there is no principle of the common law which forbids individuals from associating together to purchase lands on joint account at a public sale. These purchasers represented the decree against the mortgaged property, which was the first lien; and there is nothing in the law of the State or in the decree prohibiting them from purchasing on their own account. The scheme was not intended to prevent competition at the sale, but to provide for something for the lien creditors, subsequent in date to the mortgage. The amount of the decree for principal and interest was three million six hundred and ninety thousand six hundred dollars and eighty-four cents, with interest from the thirteenth day of January, eighteen hundred and sixty-two. The sum being so large, necessarily excluded competition at the sale, as in ordinary cases. I cannot consider the scheme to be proof of such fraud as should require the court to set the sale aside.

1107

This leads to the objection to the confirmation for inadequacy of price. The scheme and the three hundred thousand dollars paid in by the purchasers may be considered in the nature of additional consideration. But without the scheme and the payment the sale, at one million seven hundred thousand dollars, would not be set aside for inadequacy of price. The holders of the bonds secured by the mortgage are the first lien creditors, and are entitled to the avails of their decree, as in all cases of sales in foreclosure on mortgages. There is scarcely a sale at this time, under a decree, that satisfies the debt. Subsequent lien creditors very seldom, for some time past, received any surplus of proceeds of sales. But those subsequent lien creditors, it seem, may be provided for, to some extent, by the scheme.

It is no objection to the sale that in the scheme Chamberlin's claim is provided for. The schemers recognised it as a debt to be provided for, without regard to the decision of the court in regard to it. The scheme is not here for adjudication upon its several items.

1108

To the scheme I observe the name of Francis Vose appended as a party. It does not become him to object here to his own act, and the bill he has brought in this court cannot stay the confirmation of the sale. It appears that he took an active part in prosecuting this case to a final decree without setting up his claim. He should then have done it by bill, praying a reformation or extension of the terms of the mortgage, in the alleged agreement between himself and the railroad company set forth in his bill. That agreement does not appear to have been recorded as a lien. These purchasers have notice of the bill, and they can defend against it, or not, as they please.

Whether the purchasers are intending to form an association, and to connect the road purchased with the western road, cannot prevent the confirmation of the sale. I have always felt solicitous of keeping the entire road together in due faith to the charter; but, under the legislation of the State, had no means

of enforcing my wishes. The law of the State allowing the company to mortgage separate portions of the road, the court cannot refuse consent to the consummation of the contracts, or deny the right of the mortgagees to purchase the mortgaged premises. By the constitution of the State, the legislature can control the matter here complained of.

It is urged that there was no court to superintend the second adjournment of the sale. The decree was made in the month of January last, by the district court, having circuit court jurisdiction. The sale was advertised to take place in June. The marshal adjourned the sale to the 28th of July. On the 15th of July, Congress passed an act repealing the circuit court jurisdiction of the district court, and establishing a circuit court, the district judge being made competent to hold the circuit court. By the act the records and papers of the district court passed into the circuit court on the first day of October. The marshal, on the 28th July, adjourned the sale on the ground, and notified it by a new advertisement. The objection is too technical. It is the same,
1109 in substance, as if the sale had been advertised in January to take place on the second day of October.

An objection being made to the jurisdiction of the court at this special term, over the sale, I have concluded to defer making a decree confirming the sale of the railroad until the stated term commencing on the first Monday of January next. Whether the objection is well founded, or merely captious, it is not necessary here to determine, as the road is in the hands of the receiver, who could not be discharged before that time.

A decree will be prepared before the January term, for the action of the court, setting aside the sale of the lands, and confirming the sale of the road.

N. Y. Supreme Court.

Affidavit of F. P. James and others, Dec. 30, 1862.

WILLIAM CRAWSHAY and others, }
agst.
ISAAC SEYMOUR and others. }

CITY AND COUNTY OF NEW YORK, *ss:*

Frederick P. James, Russell Sage, David M. Hughes, Horace Galpen, and Isaac Seymour, being duly severally sworn, do depose and say, and each for himself says: That he is one of the defendants in this cause, and one of the trustees for the bondholders and creditors of the La Crosse and Milwaukee Railroad Company, under the arrangement set forth in the complaint; that no proposition for the purchase of the Watertown railroad, or of the claim of Selah Chamberlain, mentioned in the complaint, has been before him, as one of said trustees, since the month of July, 1862; that as such trustee, or on behalf of the parties for whom he is trustee, he has no intention or expectation, desire or design, to consider the propriety of making, or to vote for or effect any such purchase, and that the resolutions referred to in said complaint as having been passed by said trustees, July 15th, 1862, and rescinded by resolution
1110 of July 22d, 1862, were voted for by deponents, except said Sage, in good faith, and with the intention of putting an end to the project of any action by said board of trustees on the subject. Each of said deponents, except the said Sage, further says that he has no personal interest in either the said Watertown railroad, or the said Chamberlain claim. And further, these deponents say not.

ISAAC SEYMOUR.
HORACE GALPEN
RUSSELL SAGE.
D. M. HUGHES.

Sworn before me this 30th day of December, 1862, by Isaac Seymour, Horace Galpen, Russell Sage, and David M. Hughes,

J. S. MERRIAM, *Notary Public.*

F. P. JAMES.

Sworn to before me this 31st day of December, 1862, by deponent F. P. James.

E. D. MILLS,
Notary Public, New York City.

Third affidavit of Francis Vose, January 2, 1863.

Supreme court, city and county of New York.

WILLIAM CRAWSHAY and others
against
ISAAC SEYMOUR and others.

CITY AND COUNTY OF NEW YORK, *ss.:*

Francis Vose, of said city, being duly sworn, says: That he has read
1111 the copy of an affidavit of the defendant Nathaniel A. Cowdrey in this action, sworn to on the 30th December ult., and also an unsworn-to affidavit of defendants James, Sage, Hughes, and Seymour, a copy of which has been served upon the plaintiffs' attorneys in this action, and that the only way in which he can reconcile with the truth the statements in said affidavits in regard to the bargain or arrangement that has been made by the said Cowdrey and his associates for the purchase or acquisition of the Watertown railroad, and the Horicon railroad, as alleged in the complaint in this action, is by supposing that the statements in said affidavits are made as negatives pregnant, and that the object and purpose of the said Cowdrey, James, Sage, Hughes, and Seymour, whilst apparently denying, in order to deceive the court, an intention to make such purchase or acquisition, were really to assert in said affidavits that they did intend to make such purchase or acquisition; for the deponent says, that ever since July last, when the said Cowdrey was elected one of the trustees and attorneys under the agreement of October 3d, 1861, all of the proceedings of the said Cowdrey and his associates in reference to a reorganization under the same have had in view the purchase or acquisition of the said Watertown railroad. That, with that object especially in view, the meeting of the bondholders was called and held as set forth in the bill, the so-called amendments to the agreement of October 3d, 1861, were proposed by the said Cowdrey and his associates, and their adoption urged at the said meeting, and at the adjourned meeting of the sixth of November, the removal of this deponent, and the appointment of said Sage, as one of said trustees and attorneys, were attempted, and the selection was made of persons favorable to the scheme and in the interest of the said Sage and Chamberlain to be directors of the new organization; and the deponent says, that although it may be true, that the defendants Seymour, Galpen, Cowdrey, James Gould, and Hughes, whilst actually sitting together as a board of trustees, have not made any bargain or arrangement for the purchase or acquisition of the said Watertown and Horicon railroads, or either of them, and have not entered in their minutes any of their proceedings in that behalf, yet that it is nevertheless true, that they have
1112 made such bargain or arrangement, and intend to carry it into effect. That, as deponent believes and charges, knowing that their action and purposes in reference to said two railroads were illegal, and in violation of their duties as trustees and attorneys under the said agreement of October 3d, 1861, they have considered a secret and underhand course necessary for the accom-

plishment of their designs, and that therefere, and not because they have made no such bargain or arrangement, no entry of their proceedings in reference to it appears upon their minutes.

And this deponent denies that he has been expelled from the said office of trustee, and he says, that if the resolution to that effect, a copy of which is annexed to the said Cowdrey's affidavit, was passed at the meeting of October 29, 1862, it was so passed without notice to deponent; that its statements are false, and are mere pretences to justify such resolution, and, as deponent believes, said resolution was concocted by the said Cowdrey, in connexion with some of his associates, in reference mainly to their scheme or plan for the purchase or acquisition of the said Watertown and Horicon railroads, and in order to rid themselves of the deponent's opposition thereto, and that really and in truth the said resolution had no foundation either in the circumstances or the motives upon which it is apparently based; and deponent says that, as he is informed and believes, no considerable number of the said bondholders voted for the said resolution; that in regard to the allegation contained in the said Cowdrey's affidavit, that this deponent has absented himself from the meetings of the said trustees and attorneys since the said 29th October last, he says that ever since the agreement of October 3, 1861, was made, previous notices of the meetings of the said trustees and attorneys were always given by the said Cowdrey, as secretary, to each of the said trustees and attorneys, and that annexed hereto is the last notice which he has received of any such meeting, and that if meetings of the said trustees and attorneys have been held since the 29th October last, he has not received any notice of them, and has not in any other way been made aware of them.

1113 And this deponent further says that he believes it to be untrue, and therefore denies that the said Cowdrey and his associates, upon the purchase made by them of the western division of the La Crosse and Milwaukee Railroad paid $80 104,57, or any other sum, out of their own pocket; on the contrary, the deponent says that, as he is informed and believes, the entire sum necessary to make the cash payment upon such purchase was advanced by the Bank of North America, upon the pledge and hypothecation, by the said Cowdrey and his associates, of a large number of the bonds which had been intrusted to them under the said agreement of October 3, 1861, and deponent says, that said Cowdrey is a man of small pecuniary means, and of very little credit, and that his principal interest in the transactions connected with the said agreement arises from his expectation of making money out of them, for his services and otherwise, and that at the time of said sale he did not possess, and could not have raised, upon his own resources, $80,000, nor, as the deponent believes, one-tenth part of that sum.

And this deponent reiterates the assertion, that he is the attorney, in fact, of the plaintiff, William Crawshay, for the purposes of this action; and he says, that he has in his own possession the certificates given by the said trustees and attorneys, for all of the bonds belonging to the said Crawshay mentioned in the complaint, and is ready to produce the same; and he submits, that the denial of this deponent's agency contained in the said Cowdrey's affidavit is not, except constructively, of the fact of such agency, and is based entirely upon an interpretation of the said agreement of October 3, 1861, and that what the said Cowdrey really asserts in this behalf, is an erroneous conclusion therefrom.

And this deponent further says, that he has a claim against the said La Crosse and Milwaukee Railroad Company for a large amount, but not for $800,000, as stated by said Cowdrey; and claims to stand as a bondholder, under the land grant mortgage, for the same, and to have the same allowed to him in the distribution of the proceeds of the sale of the premises covered by that mortgage; that he believes said claim to be just and well founded, and that he is prosecuting, and intends to prosecute it to a final determination. But he says

1114 that all of the allegations in said Cowdrey's affidavit of fraud or collusion, and of unfair conduct and motives, on the part of deponent, in reference to said claim, are utterly untrue, and are made, as the deponent believes, with the design of exciting a prejudice against the deponent, and of diverting the attention of the court from the subject-matter of this action.

And this deponent denies that the said Cowdrey and his associates are worth $8,200,000, or any such sum, or that any of them are persons of any considerable wealth, or that the amount of their or their friends' pecuniary interest in the property which is the subject of the agreement of October 3, 1861, is larger than all the other bondholders combined, or anything approximating thereto. On the contrary, the deponent says that the said Cowdrey, who alone makes the exaggerated statement in that behalf, contained in his affidavit, is a person of very little property of any description; and deponent further denies that all of the said bondholders, except the complainants in this action, are content to have the said Cowdrey and his associates manage the property which is the subject of said agreement of October 3, 1861; on the contrary, he knows that others of the bondholders are opposed to, and desirous of removing them; and that as soon as their proceedings and designs in reference to the said Watertown road shall become known, they will, as deponent believes, be ejected from their offices of trustees by an overwhelming majority of said bondholders; that annexed hereto is an extract from a letter which he has received from one of the holders of the said land grant bonds, since the complaint in this action was prepared; and this deponent further says, that the La Crosse and Milwaukee Railroad, including the western division thereof, is now in the hands of a receiver appointed by the court in Wisconsin, who is now managing and running the same, and that he receives its income, and employs and pays its workmen, and will continue to do so until his functions cease, under the order of the court which appointed him, and that the pretence, in said Cowdrey's affidavit, that somebody will be prejudiced in reference to said income, or that there will be some confusion in the management of said railroad, or that its employés will suffer in some way, if the said Cowdrey and his associates shall not be permitted to possess themselves of it, is entirely unfounded, and has no basis in
1115 truth, or in the circumstances connected with the actual condition of the said railroad or its management.

And this deponent admits, that he opposed the confirmation of the sale under the decree of foreclosure in Wisconsin, and that his motive for doing so was to protect the interests of the land grant bondholders, as he was in good faith bound to do, and to frustrate the plans and schemes of the said Cowdrey and his associates in violation of the said agreement of October 3, 1861, and that this action, so far as he is concerned in it, is for the same purpose, and has been brought with the same motive, and with no other motive whatever; that according to his best judgment and opinion, the injunction which has been granted herein is necessary to the protection of all the persons interested under the said agreement, and that if it should be removed, and the said Cowdrey and his associates permitted to carry out their unlawful purposes in violation of the agreement of October 3, 1861, great and irreparable injury will be done to all of the said persons, and their interest in the said western division of the La Crosse Railroad, which they have been so long, and through so much litigation and expense, endeavoring to establish, will, as deponent believes, be utterly lost and thrown away.

And deponent further says, that he originally subscribed to the agreement of October 3, 1861, for himself and others, for over five hundred of the land grant bonds, and that he is now acting, personally, for more than half of that number, and that from the time said agreement was made he has always been, and now is, a holder and owner of some of the said land grant bonds in his own right, and that as he believes he has now the management, control, and possession of

a larger interest in the aggregate in the said bonds than the said Cowdrey or either of his associates has; and deponent denies that he aided, or had anything whatever to do in getting the injunction, or in getting Congress to pass a law postponing the courts, as alleged on folio 20 of the said Cowdrey's affidavit, and he says that he knew nothing whatever of these proceedings, until
1116 he saw some notice of them in the newspapers.

F. VOSE.

Sworn to before me this 2d day of January, 1863.

JAMES W. MONK.
Notary Public, New York city.

OFFICE OF TRUSTEES OF THE ASSENTING CREDITORS OF THE
LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
No. 29 WILLIAM STREET, NEW YORK, *July* 22, 1862.

DEAR SIR: There will be a meeting of the trustees to-day at 3 o'clock at this office.

Yours truly,

N. A. COWDREY, *Secretary.*

FRANCIS VOSE, Esq.

NEW CASTLE, DELAWARE, *December* 19, 1862.

DEAR SIR: Yours from Milwaukee, dated the 12th instant, was received here on Monday last, the 15th instant. I have been very unwell, or I should have answered much sooner. I am decidedly opposed to separating the western division of the La Crosse and Milwaukee Railroad from the eastern division of the same road, or to diverting any portion of the business of said road to any other road to accommodate any person or persons for their own selfish purposes. It is plain to my mind that the two sections should be united under one company, and that one interest should control and direct the business of the road; any other course must be decidedly injurious to the land grant and second mortgage bondholders. This is so plain and palpable, that I am astonished that a single bondholder should be so gulled or deceived by a few interested individuals as to listen to the scheme of dividing for a single moment.

1117 The late scheme, plan, or plot, got up in New York lately, to unite the western division of said road with the Watertown road, and for other purposes, I regard as the most wretched, vile, miserable project that could possibly be invented or got up to injure, if not destroy, the best interests of the land grant bondholders. How any man in his senses, outside the clique, can go for it is a mystery to me, and beyond my comprehension. If that plan fully succeeds we might about as well throw our bonds into the fire and say amen to it; and yet all this comes from our friends and special guardians.

Why Mr. Chamberlain, or he and Mr. Sage, should receive a large amount in money from the earnings of the road upon a junior claim, to the prejudice of all the bondholders, I cannot divine. I regard it as unjust, and am strongly opposed to it.

The road, it seems to me, was bid off at too low a price, and I hope the sale will not be confirmed. It is now said to be subject to the right of redemption, and if redeemed at that price we should lose about one-third of the value of the road. And why was this thing done? Who were intended to be benefited by it? Did not our good friends manage it? The amount due the bondholders was about double the amount at which the road was bid in. It was easy to bid in the road at what it was worth, and thus secure the bondholders. Why was this not done?

* * * * * * * * * * *

I hold thirty-five land grant bonds, numbered as follows:

		Bonds.
Nos. 8352, 353, 673, 674, 692, 693, 1120.		7
1121, 1122, 1123, 1170, 1615, 1952.		7
1157, 1158, 1159, 1160, 1161, 370.		6
		20
Low numbers.		
2774, 2775, 2776,	3	
2856 to 2862, inclusive.	7 High nos.	
3666 to 3670, inclusive.	7	15
	In all	35

1118 Let me hear from you when there is something new.

With much respect, I remain yours, &c.,

H. P. VOORHEES.

F. VOSE, Esq.

Supreme court, city and county of New York.

WILLIAM CRAWSHAY and others
against
ISAAC SEYMOUR and others.

Affidavit of Edward B. Chambre, January 2, 1863.

CITY AND COUNTY OF NEW YORK, *ss:*

Edward B. Chambre, of the city of New York, being duly sworn, says that he is a stenographer, and that he attended the meeting of the bondholders of the La Crosse and Milwaukee Railroad Company, which was held in this city on the 29th October last, for the purpose of making a report of the same; that he took down in shorthand what was said at said meeting by the various persons who addressed it, and afterwards wrote out their remarks in full, and that annexed hereto are correct extracts from the report which he thereupon made; that the Cowdrey and the James therein mentioned are, as deponent is informed and believes, the persons of that name who are defendants in this action, and that they respectively made the remarks at the said meeting which are set forth after their respective names in the paper hereto annexed, and that they made such remarks in the order and connexion therein stated; and that the person designated in the said paper as "a gentleman representing himself as a bondholder in all the roads," was, as deponent is informed and believes, Russell Sage, another defendant in this action, and that he, at the said meetings, made, in the
1119 order and connexion appearing in the said annexed paper, the remarks therein set forth immediately following his aforesaid designation.

EDWARD B. CHAMBRE.

Sworn to before me, this 2d day of January, 1863.

JAMES W. MONK,
Notary Public, New York city.

* * * * * * * * *

A bondholder wished to know, if this additional 27 miles were constructed to make a connexion with the Watertown road, would it not practically be a double road through the same parts now covered by the eastern division?

Cowdrey: It would be equal to a double track, and the interests of the road require it.

Bondholder: Will the local business support it?

Cowdrey: Yes, if it paid $250,000 last year; we can have it for $1,800,000; and our attorneys say, if we can get it, the grass will grow on the eastern division.

Bondholder: If we had the eastern division, would you think it advisable to buy it?

Cowdrey: Yes, it is advisable in any event.

A bondholder asked if there was not some question of title to the Watertown road.

Cowdrey: We do not think so; our lawyers advise us that there is not; we propose to consolidate all the property; the Horicon road last year earned $108,000, which is in the hands of a receiver, and the position of that road is such that you can control it, if you desire it.

* * * * * * * * *

A bondholder here made some further inaudible remark respecting Mr. Vose, to which

Mr. Cowdrey replied: He does many strange things we can't account for; the only other thing we ask is this resolution, recommended by all the trustees, that the agreement made by us on the 3d October, 1861, in accordance with the written recommendation of six out of seven trustees, be modified so that the number of directors may be increased from nine to not exceeding thir-
1120 teen, and that the mortgage authorized to be made by the new company may be for * * with liberty to enlarge it to $2,000,000 additional if we acquire the Watertown road; $400,000 additional preferred stock if we acquire the Horicon.

A bondholder suggested that some consideration should take place before acting on these propositions.

Cowdrey: If they were approved they will be published hereafter.

A bondholder: I should like to know what we are voting on; it may not be Latin to you, but it is to me.

Cowdrey: The trustees have given it all their attention, and have submitted it to the largest bondholders.

A bondholder: In relation to the Milwaukee and Horicon, I do not think that four or five hundred thousand dollars will buy it.

Cowdrey: We offer $800,000.

A bondholder: This programme has never been submitted to any of the bondholders that I know; I represent a large number of bonds, and had not heard of it; therefore I should recommend a little delay.

Another bondholder: Will the passage of the resolution bind us all that protest against it?

Another bondholder: I am not well informed as to the details of the reorganization of the road, but I had an idea that it was to be an effort to relieve the Milwaukee road from its embarrassments, by connecting the eastern and western ends. I have not heard that it is impossible to bring this about; but to-day I am informed that the trustees, who I supposed were engaged in that object, now propose a plan for extensive combinations with other roads, for which I do not yet see the necessity. I think we ought to retrieve the Milwaukee road first, from end to end, before considering what other roads to combine. It seems to me the bondholders ought to pause before authorizing the issue of this mortgage, and that it should not be authorized without the general consent of the bondholders. * * * I own a large amount of bonds, but this is all new to me, and it seems to me that it would be only the part of wisdom, before adopting measures of such great importance, that the thing should be understood by the bondholders, should be laid before them, and the
1121 subject be considered at a future meeting. It is a thing of such magnitude that I would not be willing to pronounce an opinion on it without some time for deliberation. If the measure proposed be a good one, it will bear

some inspection; if it is not, then it should not be passed after a few moments' discussion between a few bondholders. I therefore move, as an amendment to the resolution, that these propositions be put in print, and be submitted to the bondholders at a subsequent day, to consider the expediency of adopting them.

This amendment was seconded.

A bondholder: I represent a considerable number who have not been consulted on these alterations of the original scheme. We have great confidence in the plan as proposed last year, and signed by us, and much confidence in the trustees in whose hands the matter was placed, so far as they confined themselves to carrying out that agreement. But if the alterations proposed are to be extended, so that, instead of a scheme for freeing and carrying on one road, they are to become responsible or interested in three—the Horicon, Watertown, and La Crosse—they do not propose to go into it with their eyes open. * * * They are not willing to consent to $2,000,000 more being added to their liabilities for the purpose of getting the Watertown road. It is to be considered whether, if this were passed to-day, we should not involve the trustees and bondholders in new troubles.

Cowdrey: Whom do you represent?

Bondholder: I represent Mr. Oddie, and many others.

Cowdrey: I have never seen you here before.

Bondholder: I never had the pleasure of being here before. I understood that the plan was to buy the old road to get it free from incumbrance. If we go into these operations, the parties who are bound by this arrangement will not consent to be bound longer on it; they will not be bound by their scheme as altered, and I think that the bondholders and trustees had better consider whether they will not involve themselves in new embarrassments and controversies. The other two roads have no necessary connexion with ours.

1122 *Another bondholder:* It may be well to consider the plan, but time should be given for that purpose.

Cowdrey: The plan is to issue $800,000 to the eastern division, who have incurred $650,000, and there are other plans of settling it; at one time it seemed impossible to get the western division, and the same to be paid for the Watertown road is less than half what was to be paid for the eastern division, whilst the traffic last year, taking the Horicon from the eastern division, was about equal to the eastern road. The roads run nearly parallel, and either of them, we think, is payable, at the amount we propose to give on them. Many think it will be impossible to get them by giving $2,800,000, but I think we can do so, and I think our securities will take such a stand in the market that they will be glad to exchange their unsaleable securities for ours, which are saleable and good; we have already incurred liabilities on the eastern division without getting it, and I think that in this way we could get a majority of the bonds of the eastern division.

A bondholder: The experience as to parallel roads is not so favorable as to induce speculation.

Mr. Cowdrey: It was considered favorable.

Bondholder: It is not right to ask us to give our assent without information which is only fair and proper. I had not heard a syllable of this before, although I was informed that some notice would be given, together with a programme, in the papers, but I have not seen it. I would give no assent to any change without consideration.

James: The original agreement stated, that if six of the trustees agreed to it, and a majority of the bondholders, it would obtain.

A bondholder wished to know who were the six trustees whose names were appended to the resolution.

James: It is expressly ordained, that if any trustee die, his place shall be filled by other trustees. This has been done, and we suppose we have acted in a

spirit of compromise, and for the benefit of all parties. I think the public appreciate our object in being willing to give a much higher price for bonds then when we started, and I think that this favor is on the supposition that we can secure one or both of the roads.

1123 *A bondholder:* Why take both?

James: We have not done so yet.

A gentleman, representing himself as a bondholder in all the roads, here said: I wish to give all the information I can to any who desire correct information, but if any are hired to come here and disturb the harmony, I have nothing to say to them. To those who wish for such information as an experience of ten years in Wisconsin enables me to give, I shall be happy to express my views. Without a modification of the original agreement, the plan cannot be carried out, and, therefore, we have to consider something else. I have inquired as to the Watertown road, and find that that road nets more money than any other road in Wisconsin; on the amount proposed to be paid for it, would be no onus on the bondholders.

A bondholder: We would like a printed statement of the facts.

Bondholder in all the roads: I think if we succeed in this arrangement, we shall add materially to the value of our bonds in acquiring that road, and also in acquiring the eastern division. The roads are capable of self-sustenance if in hands of a proper organization. It is to the interest of all our opponents to adopt this measure, and to avoid the competition already existing between the roads. Any one who knows the limited facilities for conducting the business of the La Crosse road must admit that additional facilities are indispensable, and I undertake to say that the business is only in its infancy, only beginning to develop, and it is necessary to make a connexion with the Lake Shore road, on the south of the river, to make facilities for the vast amount of business which is sure to come over there. I should be pleased to admit of time for consideration, as there is nothing but what will bear scrutiny from every fair-minded bondholder; and if it is not approved of, I shall vote against it, and take my chances, although I do not think that it is for our interest to do so. I think that we had better unite, and make it the most paying property in the western country, by putting an end to this litigation and combining the roads.

1124 *A bondholder* expressed himself quite in the dark, having come in late, and stated that he would like to have a definite statement of the propositions before the meetings.

The bondholder in all the roads went briefly over them; before concluding, wished to add, for the benefit of those who may not understand the difficulty, a statement of the present location of the La Crosse road, and the loss of business incurred in consequence. A large portion of the traffic passes to the Northwestern road, for the purpose of avoiding a break in the city, which cannot be obviated without an expenditure of several hundred thousand dollars in building round the city. The break is a serious one, which few like to subject themselves to.

* * * * * * * * *

SUPREME COURT.

WILLIAM CRAWSHAY and others
agst.
ISAAC SEYMOUR and others.

Second Affidavit of Seymour, James, Hughes, and Galpen, January 3, 1863.

City and County of New York, ss:

Isaac Seymour, Frederick P. James, David M. Hughes, and Horace Galpen, being duly severally sworn, do depose and say: That the defendants, Nathaniel

A. Cowdrey and Russell Sage, are now absent from this city, having gone to Wisconsin, and that the defendant, William Gould, resides at Albany, and is now there; that these defendants are familiar with the wishes and intentions of said Gould, Cowdrey, and Sage, as trustees as alleged in the complaint; and these defendants severally say, that the trustees have not, nor, so far as these deponents are informed and believe, have any of said trustees, as such, or individually, made any bargain, or come to any agreement or understanding with any party or corporation, for the purchase of The Watertown Railroad, or of
The Horicon Railroad, mentioned in the complaint, or of the claim of
1125 Selah Chamberlain, therein mentioned; nor have these deponents, or said Cowdrey, Gould, or Sage (so far as these deponents know or believe) any intention, as trustees, under the agreement or agreements set up in the complaint, or individually, of purchasing said two roads, or either of them, or said claim; they further say, that they have made no bargain, nor come to any understanding, nor made, or had any negotiation with any corporation or body of persons, nor with any person, for the transfer of the franchise and other property purchased in the names of said James, Cowdrey, and Seymour, alleged in the complaint, or any interest therein, or claim thereon, other than as specified in the agreement of October 3, 1861. These deponents further say that, on and long before October 3, 1861, there were in force, in the State of Wisconsin, general laws for the organization of railroad companies, by purchasers of railroad property sold under foreclosure, and that the only intention, wish, or design of these deponents, or of said Cowdrey, Sage, and Gould (as far as any intention, wish, or design, have been expressed by them) in respect to a transfer of said franchise and property so bought as aforesaid, is to transfer the same to such corporation as shall be organized in pursuance of such general laws, and in making such transfer, to act under the authority and in pursuance of the authority expressed in the resolution contained at folio 130 of the complaint, and to subject such corporation to all the terms and stipulations of the said trust deed of October, 1861, and to no others, and to receive from such corporation the securities appropriated in said agreement or trust deed, for the use and the sole use of the parties assenting to said deed, and for no other parties or purpose whatever.

This deponent, Frederick P. James, further says, that he has read the affidavit of Edward P. Chambre, sworn to in this suit, January 2, 1863; that deponent was present at the meeting of October 29, 1862, to which said affidavit relates; that the pretended report of said meeting, attached to said affidavit, is garbled and unfair, and calculated to give the court an erroneous impression as to the sentiment and expression of the meeting; that some of the remarks attributed
in said report to a bondholder were made by one of the firm of I. & R.
1126 Milbank; that others of the remarks attributed in said report to a bondholder were made by Joseph H. Choate, esq., one of the attorneys for the plaintiffs in this cause; that instead of the opening remarks attributed to deponent, on the fifth page of said report, deponent said that "it was expressly conditioned in the agreement, that if any of the trustees die, or any vacancy occurs, the remaining trustees have power to fill such vacancy;" and that said report as to the remarks of deponent is incorrect, and does not convey deponent's meaning.

These deponents further say, that they have not taken any step as trustees (by which designation they mean to refer to themselves, when acting in the organization of a new corporation as well as in all other particulars to which the term is applicable) for the purpose of frustrating or defeating the said scheme of October 3d, 1861, or any part thereof, although they have, as trustees, recom-

mended the modification of said scheme by the parties entitled to modify the same; and although, as individuals, and as trustees (if there can be any distinction as to the character in which they entertain opinions which they would entertain, whether in or out of office) they are of opinion that it would be advantageous to bondholders to have the same modified.

These deponents further say, that it is not true that for the reasons stated in the affidavit of Francis Vose, or for any other reasons, they have considered a secret and underhand course necessary for the accomplishment of their designs, and that it is not for the reasons alleged in said affidavit that no entry of any proceedings in reference to the bargain alleged in said affidavit has been made.

These deponents further say, that the meeting at which said Vose was expelled from office was a very large and full meeting of parties acknowledged to be interested under said trust; that the same was just such a meeting in appearance, and in the method of conducting its proceedings, as the meeting by which said Vose had been appointed; and that these deponents believed then, and believe now, the statements of fact contained in the preamble adopted at said meeting to be true.

These deponents further say, that the sum of $80,104 57 paid into
1127 court by them on said foreclosure was not raised on any hypothecation, or by any use of the securities deposited with them, under said declaration of trust, but was raised by procuring to be discounted by the Bank of North America (of which the defendant Isaac Seymour is president) the joint note of the defendants Seymour, Hughes, Crowdrey, and James.

And these deponents say, upon information and belief, that it is not true, that the defendant Cowdrey is a man of small pecuniary means, nor of little credit; nor is it true, as they are informed and believe, that said Cowdrey at the time of said sale did not possess, and could not have raised upon his own resources, one-tenth of the sum of $80,000; and, on the contrary, these deponents believe said Cowdrey to be a person worth more than $70,000, at least; and that the statements in said Cowdrey's affidavit respecting the pecuniary responsibility of these deponents, and of said Sage, Gould, and Cowdrey, are true.

These deponents further say, that the claims of said Francis Vose against the La Crosse & Milwaukee Company do not exist in the form of bonds, or of any security issued by said company, and are not in any form which entitles them to the benefit of said scheme of October 3d, 1861; and that the same is in suit by him in a U. S. court in Wisconsin.

And in reference to the averment of said affidavit, that in a certain contingency, these deponents will be ejected from office by an overwhelming majority of the bondholders, these deponents say, that if such contingent ejection shall happen through the action of any meeting of bondholders, as harmonious as that which effected the expulsion of said Vose, these deponents will, unlike said Vose, endeavor to submit to the will of their constituents, although they do not share his expectations.

And these deponents say, that many of those whom they represent are expecting a speedy organization of the proposed new company, and an early issue of its securities and stocks, and have made arrangements depending upon the same; and that a delay of such organization and issue will be productive of serious and extensive inconvenience, and pecuniary loss, through failure of interest and otherwise.

1128 This deponent James further says, that within a recent period, and not more than about two months ago, said Vose informed him that he (said Vose) had scarcely any interest in the bonds of said company, as his (said Vose's) creditors had sold him (said Vose's) interest; and these defendants

became purchasers of 270 of the bonds which, up to the time of such selling out, had been pledged as collateral security for said Vose's debts.

And further these deponents say not.

D. M. HUGHES.

Sworn before me, this 3d day of January, 1863.

STURGIS M. MOREHOUSE,
Notary Public.

F. P. JAMES.
I. SEYMOUR.
H. GALPEN.

Sworn to before me, by F. P. James, Isaac Seymour, and H. Galpen, this 5th day of January, 1863.

ANDREW KOHLER,
Notary Public, C. & Co., of New York.

At a special term of the supreme court of the State of New York,
1129 held at the city hall in the city of New York, on the 21st day of January, 1863.

Present—Hon. James G. Hoyt, Justice.

WILLIAM CRAWSHAY and others, *against* ISAAC SEYMOUR and others. } Modified injunction order, Jan. 21, 1863.

An order having been made on the 23d day of December, 1862, by his honor, Justice Leonard, enjoining and restraining certain of the defendants in this action, as therein provided, and requiring the said defendants to show cause why, pending this action, such injunction should not be continued; and the motion for the continuance of the said injunction, during the pendency of this action, having come on to be heard; and having been heard before the justice now presiding, on the 2d and 3d days of January inst.; and the defendants having thereupon shown cause, by reading the affidavit of Nathaniel A. Cowdrey, sworn to December 30, 1862, the affidavit of Frederick P. James, David M. Hughes, Russell Sage, Horace Galpen, and Isaac Seymour, sworn to December 31, 1862, and the affidavits of Frederick P. James, David M. Hughes, Horace Galpen, and Isaac Seymour, sworn to by said Hughes January 3, 1863, and by said Galpen, Seymour, and James, January 4, 1863, (which papers are herewith filed,) and the plaintiffs having read, in support of said order, the papers in which the same was granted, being the complaint in this cause, and the affidavits of Francis Vose and Orville Oddie, sworn to December 23, 1862, together with said order, and also the additional affidavit of said Francis Vose, sworn to January 2, 1863, and the affidavit of Edward B. Chambre, sworn to January 2, 1863, (which last-mentioned papers are also herewith filed,) and counsel having been heard for the respective parties, and due deliberation thereupon had, it is now ordered by the court: That said order, so far as it seeks to restrain or prevent the defendants, or any of
1130 them, from moving for obtaining or accepting a confirmation of the sale heretofore made by the marshal of the United States for the district of Wisconsin, of the mortgaged premises mentioned in the complaint in this action, or from accepting a deed of the said mortgaged premises from the said marshal, or from reorganizing a new corporation, under and in pursuance of the agreement of October 3, 1861, referred to in the complaint in this action, be so far modified as to permit the defendants in this action who were restrained by the said order (except the defendant Sage) to have the said sale con-

firmed, and to permit the defendants Seymour, Cowdrey, Hughes, Gould, Galpen, and James to accept a deed for the said mortgaged premises from the said marshal to them, together with the plaintiff Francis Vose, as trustees and attorneys under the said agreement of October 3, 1861, but not otherwise, and also to permit the said defendants Seymour, Cowdrey, Hughes, Gould, Galpen, and James, together with the said Vose or a majority of them, according to the provisions of said agreement, to reorganize a new corporation under and in pursuance of the said agreement of October 3, 1861, according to the original provisions thereof, apart from any amendments, alterations, or modifications, or pretended amendments, alterations, or modifications of the same, but not otherwise, and that in all other respects the defendants in this action, and each and every of them, continue to be, and they and their attorneys, solicitors, and agents are hereby enjoined and restrained, as provided in the said order granted in this action by his honor, Justice Leonard, on the 23d day of December last.

And it is further ordered, that during the pendency of this action, and until the further order of this court, the defendant Russell Sage be, and he is hereby enjoined and restrained from acting in any way as a trustee or attorney under the said agreement of October 3, 1861.

And it is further ordered, that during the pendency of this action, and until the further order of this court, the said defendants Seymour, Cowdrey, Hughes, Gould, Galpen, and James, and each of them, be and they are hereby also enjoined and restrained from accepting from the said marshal of the United
1131 States for the district of Wisconsin any conveyance of the said mortgaged premises, except as trustees and attorneys with said Vose under the said agreement of October 3, 1861, and hereinbefore permitted, nor unless all of them, together with the said Vose, shall be named in such conveyance as grantees therein. And that during the pendency of this action, and until the further order of this court, they, the said Seymour, Cowdrey, Hughes, Gould, Galpen, and James, be, and they and each of them are also hereby, enjoined and restrained from giving any effect or operation, or doing or attempting to do, or directing to be done, any act or proceeding whereby any effect or operation shall be given to the pretended amendments, alterations, or modifications of the said agreement of October 3, 1861, referred to in the complaint in this action, and from taking possession of the said mortgaged premises, or any part thereof, under said sale or conveyance, to be made to them of the same, and from conveying or transferring, or attempting to convey or transfer the said mortgaged premises, or any part thereof, to any person or persons whomsoever, or to any corporation, company, or association whatsoever.

And it is further ordered, that the said defendants Seymour, Cowdrey, Hughes, Gould, Galpen, and James have leave to move for further directions in this matter, and for a modification accordingly of the injunction imposed by this order as occasion hereafter may arise, in the due execution of the trusts created by the said agreement of October 3, 1861, as it was originally made.

(A copy.)

H. W. GENET,
Clerk.

1132 Supreme Court.

WILLIAM CRAWSHAY and others
vs.
ISAAC SEYMOUR and others, appellants. } Notice of appeal, Jan. 24, 1863.

GENTLEMEN: You will please to take notice that the defendants, for whom we appear in this cause, hereby appeal to the general term of this court from so much of the order made in this cause on the 21st day of January, instant, as continues in force the order of December 23, 1862, in any respect: And from

so much of said order of January 21, 1863, as enjoins and restrains the defendant Russell Sage from acting in any way as a trustee or attorney under the agreement mentioned in said order: and from so much of said order of January 21, 1863, as enjoins and restrains the defendants Seymour, Cowdrey, Hughes, Gould, Galpen, and James from accepting from the marshal of the United States for the district of Wisconsin any conveyance of the premises mentioned in said order, except as in said order mentioned; and from so much of said order of January 21, 1863, as enjoins and restrains the defendants Seymour, Cowdrey, James, Hughes, Gould, and Galpen from giving any effect or operation, or doing or attempting to do, or directing to be done, any act or proceeding whereby any effect or operation shall be given to the amendments, alterations, or modifications of the said agreement of October 3, 1861, referred to in the complaint in this action; and also from so much of said order of January 21, 1863, as restrains and enjoins the defendants Seymour, Cowdrey, Hughes, Gould, Galpen, and James from taking possession of the said mortgaged premises, or any part thereof, under the said sale or conveyance to be made to them; and also from so much of said order of January 21, 1863, as restrains and enjoins the defendants Seymour, Gould, Cowdrey, Hughes, Galpen, and James from conveying or transferring, or attempting to convey or transfer, the
1133 said mortgaged premises, or any part thereof, to any person or persons whomsoever, or to any corporation, company, or association whatsoever.

Dated January 24, 1863.

Yours, &c.,

BUCKHAM, VAN COTT & BANGS,
Attys. for all defts., except Selah Chamberlain.

To H. W. GENET, Esq.

EVARTS, SOUTHMAYD & CHOATE, Esqs.,
Attys. for plffs.

1134 Supreme Court.

WILLIAM CRAWSHAY and others
against
ISAAC SEYMOUR and others.

The defendants, Isaac Seymour, Horace Galpen, Nathaniel A. Cowdrey, Frederick P. James, William Gould, David M. Hughes, and Russel Sage, and also the defendants, Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, &c., answer the complaint of the plaintiffs, and upon information and belief they deny that the plaintiffs, Orville Oddie and Christopher R St. George were at the times, or any of the times mentioned in said complaint, owners of or interested in any of the bonds mentioned in the said complaint, or that any of the bonds therein mentioned were the property of the said Oddie and St. George at the time of the delivery thereof to the said trustees and attorneys; and upon information and belief they deny that the plaintiffs, or any of them had suspected or supposed, or had any reason to suspect or suppose, that the said trustees and attorneys could or would have deviated from the scheme and plan in
1135 said complaint at folios 54, thereof mentioned; as such scheme or plan had been arranged the said plaintiffs would not nor would any other holders of the said land grant bonds have become parties to the same nor have intrusted the possession of their bonds to the said trustees and attorneys.

And they deny that the defendants, Seymour, Gage, Galpen, Cowdrey, James, Hughes, and Gould have ever deviated from the said scheme or plan for the purchase of said mortgaged premises. And they say that besides the sum of two million and nineteen thousand eight hundred and ninety-five dollars and forty-three cents ($2,019.895\frac{43}{100}$) paid upon the sale mentioned in the complaint to the marshal of the United States for the district of Wisconsin, as alleged in said complaint at folio 59 thereof, the defendants Seymour, James, and Cowdrey paid to said marshal upon said sale, in cash, the further sum of eighty thousand one hundred and four dollars and fifty-seven cents, ($80,104\frac{57}{100}$) and they say that said sale was, before the commencement of this action, decided by the said court to be a valid sale
1136 as to the said railroad and its appurtenances, but not to be effectual or valid as to the said lands mentioned in said complaint as having been granted in or embraced by the act of Congress and the act of the legislature of the State of Wisconsin, in the complaint mentioned.

Whereupon these defendents Cowdrey, Sage, Galpen, Hughes, and Seymour, without consulting said Gould, declined to accept the said railroad and its appurtenances without the said lands and a resale of all said mortgaged premises has since been ordered by said court, and except, as last hereinbefore stated, these defendants deny that said sale has not yet been confirmed, or that these defendants, or any of them, have taken or are pursuing measures to obtain the deed for said mortgaged premises. And they deny that since the said sale was made, and since the said mortgaged premises were bid in as aforesaid, the said Seymour, Galpen, Cowdrey, James, Gould, and Hughes, or any of them, instead of carrying out in good faith the said scheme or plan of October 3, 1861, have, in violation of the trust reposed in them and of the said agreement or otherwise, have been engaged in efforts to frustrate and defeat the same, or
1137 without any warrant or authority to substitute therefor another and different scheme or plan, which was never contemplated by the said land grant bondholders, or would never have been assented to by them, or which, if carried out, will involve the sacrifice of the interests of the said land grant bondholders in the said mortgaged premises, or the loss of a great or any extent of the amount due to them upon the said bonds. And they deny, upon information and belief, that the two railroads, called respectively the Milwaukee and Western railroad, and the Milwaukee and Horican railroad are not at all connected with the said western division of the La Crosse and Milwaukee railroad, or that the said Watertown railroad is wholly covered by mortgages or debts, involved in litigation, or that either of said Watertown or Horicon railroads is under great and irretrievable embarrassments. And they deny that the said trustees and attorneys have entered into arrangements with the said Selah Chamberlain and Russel Sage for the purchase of the said two railroads.

1138 And they deny upon information and belief, that the said so-called Watertown Railroad besides being held by an uncertain

and doubtful title, in relation to which questions and litigations are likely to arise, is subject to the mortgages in that behalf specified in the complaint.

And, excepting the paragraph contained at fol. 11 of the complaint, these defendants deny every and each allegation contained in the complaint from the end of the list of mortgages and incumbrances, (contained in the complaint and ending in the 68th folio thereof,) to the words "mortgaged" security inclusive. Where those words first occur in folio 73 thereof, and upon information and belief, they deny that, under the judgment mentioned in the said complaint, said Selah Chamberlain has attempted to get possession of the La Crosse and Milwaukee Railroad as alleged in the complaint; and they deny the said Russel Sage, of his own knowledge, and the others of said defendants, upon information and belief, that the said Russel Sage has any interest in the two judgments mentioned in the complaint at fol. 75 thereof, except as a creditor of said Chamberlain, or that
1139 said Russel Sage is a holder of the mortgage bonds of an inferior grade mentioned in saidecomplaint at fol. 75 thereof, or that he has been endeavoring for several years past, for the purpose mentioned in the complaint or otherwise, to obtain a foothold in or control over the property covered by the said land grant mortgage.

And they deny, upon information and belief, that the judgment of said Chamberlain, mentioned in fol. 86 of said complaint, was docketted without the service of any process upon any officer of said company, or that the same was confessed or docketted with such fraudulent designs, or for such purpose as is in the said complaint in that behalf alleged.

And upon information and belief they deny the averment in said complaint, that the said Chamberlain has no longer any demand against the said La Crosse and Milwaukee Railroad, either upon said judgment confessed to him or upon that recovered by said Cleaveland. And these defendants say that the dismissal by the Supreme Court of the United States of the appeal of said Chamberlain
1140 to that court mentioned in the complaint was procured by the intervention and on the actual motion of the persons then filling the office of trustees under said agreement of Oct. 2d, 1861, including the defendants, Seymour, Galpin, Gould, Cowdrey, Hughes, and James; but they say upon advice, information, and belief, that the decree, of which a copy marked schedule N is annexed to said complaint, was made in a suit in which Newcomb Cleveland was the only party plaintiff or complainant, and that said decree does not enure to the benefit of any person other than the said Newcomb Cleveland.

And they deny that the inability of the plaintiffs alleged at folio 77 of said complaint to state the exact particulars and results of the negotiation alleged in said complaint arises from the said alleged negotiation having been conducted by the said Seymour, Galpen, Cowdrey, James, and Gould, and Hughes in any secret or underhand manner, and they deny that the assumption and payment of the said pretended judgment claims to be held by the said Chamberlain, and

the payment of the bonds mentioned at fol. 78 of the complaint
1141 are prominent features in such alleged negotiations, or in any bargain or understanding which has resulted thereupon between the said last above-named trustees and attorneys and the said Chamberlain and Sage. And these defendants—the said Sage of his own knowledge, and the remaining defendants upon information and belief—deny that the main purpose of the said Chamberlain and Sage is as alleged in said complaint, or that all the other features of such alleged negotiations were and are a mere cover leading to that end. And they admit that if Alfred Noxon, mentioned in said complaint, is, as alleged in said complaint, deeply interested in having his alleged claims against the said Watertown railroad converted into anything, he is deeply interested in having the same converted into something of equal or greater, and not less value, but otherwise they wholly deny that the said Alfred Noxon is deeply interested in having his said alleged claims converted into something of value, or converted at all.

And they deny, upon information and belief, that the said
1142 Francis Vose threatened to make the resolutions set forth in Schedule M of said complaint known to the said land grant bondholders. And if the said complaint at folio 82 thereat is to be construed as averring, implying, insinuating that the said resolutions were rescinded because of such alleged threats, then these deponents deny the truth of such averment, implication, or insinuation, and they deny that the said resolutions were rescinded for the purpose in that behalf alleged in the complaint, or for any or either of such purposes. And they deny that the said letters and resolutions contain, substantially or otherwise, the terms of any bargain or arrangement subsequently made between the said trustees and attorneys and the said Chamberlain and Sage, in reference to the said Watertown road. And these defendants deny that if it is alleged by or on behalf of the persons who have succeeded to the rights of the said The La Crosse and Milwaukee Railroad Company that the judgment of said Cleveland has been satisfied, as in the complaint alleged, such allegation is truly made, or that any balance thereof not so satisfied would,
1143 in the hands of the said Chamberlain, be extinguished and absorbed by the amount which will be found to be due from him to the said company upon a just and equitable statement of accounts between him and the said company, and that, as they are informed and believe, the sum of four hundred and eighteen thousand dollars and upwards is actually due to the said Chamberlain from said La Crosse and Milwaukee Railroad Company, upon said judgment so recovered by him as aforesaid, the said sum having been found and been reported to be due to him thereon by masters or commissions in chancery, duly appointed by said district court of Wisconsin, and authorized by the said court to ascertain and report the same, and they aver, upon information and belief, that the sum of fifty thousand dollars, or thereabouts, is actually due, and now remains unpaid, upon the said Cleveland judgment.

And these defendants deny each and every averment of the com-

plaint contained in the 95th and 96th, and 98th, 99th, 100th, and 101 folios thereof. And they deny that at the meeting called
1144 for the 29th day of October, 1862, as alleged in said complaint, any such attempt was made as is in that behalf alleged in the complaint at folios 101 and 102 thereof, or that such objection or requisition was made as is in that behalf alleged in the complaint. And they deny that the paper of which a copy is contained in Schedule O, annexed to said complaint, was not sent to any of said land grant bondholders who resided at places remote from the city of New York, or that it was not sent to bondholders residing in Europe. And they, upon information and belief, deny the allegation of the complaint contained in folios 105 to 116 thereof, except that it is true that the defendants Cowdrey, Galpin, Hughes, Seymour, James, and Gould have treated the said defendant Sage as holding the office of trustee and attorney under said agreement of October 3d, 1861, and have permitted him to act with them in that capacity under said agreement.

And they say, upon information and belief, that before said treatment of and permission to the said Sage, the said Francis Vose had been duly and lawfully removed from his place as trustee and
1145 attorney under the said agreement, and the said R. Sage had been duly and lawfully appointed to fill the said office.

And they deny so much of the said complaint as charges that these defendants, Seymour, Galpin, Sage, Cowdrey, James, Gould, and Hughes have, or that either of them has, been faithless to the trust reposed in them, or as charges that the defendants last named are, or that either of them is, unfit or unworthy to act any longer as trustees or attorneys, or as the trustee and attorney of the persons assenting to the agreement of October 3d, 1861.

BUCKHAM, VAN COTT & BANGS,
Atty's for defendants Seymour, Galpin, Cowdrey, Hughes, James, Sage, Gould, Bronson, Soutter, and Knapp.

CITY AND COUNTY OF NEW YORK, *ss.*:

We, defendants, Cowdrey, Sage, Galpin, Hughes, James, and Seymour, being duly severally sworn, do depose and say, and each for himself says, that the foregoing answer is true to our, and each of our own, knowledge, except as to the matters therein stated
1146 upon information and belief, and as to those matters we believe it to be true.

I. SEYMOUR,
D. M. HUGHES,
HORACE GALPIN,
N. A. COWDREY,
RUSSELL SAGE,
F. P. JAMES.

Sworn to and subscribed this 19th day of Jan'y, 1863, before me,
EDWIN R. MEADE,
Notary Public, N. Y. city.

ALBANY COUNTY AND CITY ALBANY, *ss:*

The defendant, Wm. Gould, being sworn, deposes and says that the foregoing answer is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

WILLIAM GOULD.

Sworn to and subscribed this January 21st, 1863, before me,
H. S. McCALL,
Com. of Deeds.

1147 At a special term of the supreme court of the State of New York, held at the City Hall, in the city of New York, on the 23d day of March, 1863.

Present:—Hon. D. P. Ingraham, J.

WILLIAM CRAWSHAY AND OTHERS
against
ISAAC SEYMOUR AND OTHERS.

The defendants on the tenth day of March, having procured from the justice now presiding, upon the pleadings in this cause and the order made therein on the 21st day of January last, and the papers on which said last mentioned order was granted, an order requiring the plaintiffs to show cause why said order of January 21st, 1863, should not be modified, and the said order to show cause coming on to be heard, and the plaintiffs appearing by counsel and opposing now on reading and filing the said order to show cause and the papers on which the same was granted, and on motion of defendants' counsel it is ordered that leave be and such leave is hereby given, notwithstanding said order of January 21st, 1863, to the defendants.

Seymour, Coudrey, Hughes, Gould, Galpin, and James, and
1148 the plaintiff, Francis Vose, as trustees under the agreement of October 3d, 1861, in the pleadings mentioned in a majority of them to become bidders for and purchasers of the whole or any part of the mortgaged premises mentioned in said papers at any sale thereof hereafter to be made under the decree of foreclosure made by the district court of the United States for the district of Wisconsin, January 13th, 1862, under and in pursuance of the agreement of October 3d, 1861, mentioned in such papers, and upon such purchase to accept a deed therefor in the form and mode presented in said order of January 21st, 1863; and it is further ordered, on motion of plaintiffs' counsel, counsel for the defendants opposing, that in all other respects the said order to show cause be and the same is hereby dismissed, and the motion founded thereon be and the same is hereby denied. But this order shall not prejudice any future application by the defendants or any of them for further directions or for a further modification of said order of January 21st, 1863, if and when said appeal shall be determined, countermanded or withdrawn, nor any application in motion by defendants or any of them as oc-
1149 casion may arise in the due execution of the trust created by said agreement of October 3d, 1861, as it was originally made.

[U. S, stamp.]

STATE OF NEW YORK,
City and County of New York, ss:

I, Henry W. Genet, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original order remaining in my office, and that the same is a correct transcript therefrom and of the *the* whole of the original.

In witness whereof, I have hereunto subscribed my name [SEAL.] and affixed my official seal this 2d day of April, 1863.

H. W. GENET, *Clerk.*

[Five-cent revenue stamp, cancelled.]

All which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness George G. Barnard, justice of the city of New York, the twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-seventh.

H. W. GENET, *Clerk.*

I, George G. Barnard, a presiding justice of the supreme
1150 court of the State of New York for the city and county of New York, do hereby certify that Henry W. Genet, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York and clerk of said supreme court of said county, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, April 20, 1863.

GEORGE G. BARNARD, *J. S. C.*

1151 *Exhibit A.*

State of Wisconsin.—In senate.—No. 200, S.

March 5. Introduced by Senator Clark. Read first and second times, and referred to Committee on Railroads, and ordered printed.

A BILL to incorporate the bondholders of the La Crosse and Milwaukee Railroad Company.

Whereas in the judgment of this legislature the objects of the corporation herein named cannot be attained under general laws, therefore the people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. That Isaac Seymour, N. A. Cowdrey, Horace Galpen, William Gould, David M. Hughes, Frederick P. James, Russell Sage, and George Smith, of New York; Alexander Mitchell, Hans Crocker, Asabel Finch, George W. Rogers, of Milwaukee, and Selah Chamberlain, of Ohio, and their associates, successors, and assigns, and hereby created a body corporate and politic, under the name and style of the "Milwaukee and St. Paul Railway Company," and by

that name be and they hereby are made capable in law and equity to purchase and hold all kinds of property which may from time to time be necessary for the legitimate operation of the railroad of said company; but more particularly the said corporation is hereby au-
1152 thorized and empowered to purchase the western division of the road of the La Crosse and Milwaukee Railroad Company, which is now advertised for sale under the order and decree of the circuit court of the United States for *for* the district of Wisconsin: likewise the said corporation are hereby permitted to plead, and be impleaded, defend, and be defended in any of the courts of this State, or anywhere else; to make, have, and use a common seal, and the same to change, renew, and alter at pleasure; and they shall be, and hereby are invested with all the powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act as hereinafter set forth.

Section 2. For the first year, and until others are chosen in their places, the corporators above named shall be the directors of the company. And thereafter the number of directors shall be thirteen, and each director, from and after ninety days from the date of the organization of this company, shall own at least one hundred shares of the capital stock of this corporation; and if at any time any director shall cease to own such amount, he shall be disqualified from being such director, and his office shall be from thenceforth vacated.

Section 3. The capital stock of said corporation for the acquiring title to the said western division of roads, shall consist of, and shall not exceed, except as hereinafter provided, $4,200,000, divided into 42,000 shares, which said shares shall be subdivided as follows:
1153 An amount not exceeding $3,450,000, or 34,500 shares, shall be set apart and designated as "preferred stock," and the full sum of $100 per share shall be paid thereon, except on so much of this class as is hereinafter designated as "scrip preferred stock," and on this scrip stock the sum of one dollar per share shall be paid, the balance of said capital stock of $750,000, or 7,500 shares, shall be designated as "common stock," and the said corporation are hereby authorized to issue the same to such persons, and in such manner, and for such price as its board of directors may deem expedient; of the said $3,450,000 preferred stock, an amount not exceeding $2,200,000 at par, or 22,000 shares, shall be set apart and designated as "scrip preferred stock;" the scrip preferred stock here named, or hereafter named, shall not, at any time, exceed the amount of outstanding mortgage bonds hereinafter named. The scrip preferred stock shall not be subject to any assessment, and shall entitle the person in whose name it stands upon the books of the company, to all the rights and privileges of other stockholders, except that it shall not entitle the holder to any dividend or other profit or increase from the income or assets of this company. It shall be issued in certificates of five or ten shares each, and shall accompany each mortgage bond of the company. The holder thereof shall have the right, at any time within ten days after any dividend shall have been declared, and become payable on the preferred stock, to pay the full sum of one hun-

dred dollars per share by the surrender to the company of the
1154 mortgage bond named by its number in his scrip certificate, and upon surrendering said certificate and bond, he shall be entitled to receive therefor the same number of shares of preferred full paid stock, and entitled to dividends. The said preferred stock, except said scrip stock, shall be entitled to a dividend of seven per centum per annum, from the net earnings of each current year, after payment of interest on all the mortgage bonds, if the company earn so much during the current year, and before the payment of dividends to any other class of stockholders; but the company may reserve a reasonable working capital or surplus, before the dividend shall be considered earned or declared, which surplus shall not exceed, at any time, the aggregate sum of $250,000, over and above the floating or unfunded debt, and the accrued interest on the mortgage bonds, before the payment of dividends on said preferred stock. If the net earnings of the company are not so much in any one year, then the said preferred stock shall receive for that year a dividend of whatever the said net earnings are, after the payment of interest on the mortgage bonds, and the reasonable reserve for a working capital, as above described. Said preferred stock shall not have any claim upon the earnings of any other year for the non-payment of dividends of any preceding year. And whenever the company earns sufficient over and above the payment of interest on the bonds and the reserve above
1155 named, over and above the reserve above named, to pay a greater sum than seven per cent. on said outstanding preferred stock, and seven per cent. on the common stock, then the said preferred stock shall share *pro rata* with the common stock in net earnings. The said capital stock, or any part thereof, may be paid for in cash, or in any valid claims, debts, mortgages, bonds, or coupons of the La Crosse and Milwaukee Railroad Company, or the Milwaukee and Minnesota Railroad Company, in such manner and form, and on such terms, and at such rates as the corporators above named shall determine, or after the corporation hereby incorporated is organized as this company, and the said creditors or claimants shall agree. The said corporators, or a majority of them, may organize this corporation at such time and place and upon such notice as may be agreed upon by the majority thereof.

Section 4. The directors of the company shall have power to increase the said capital stock for the following purposes and objects and for the amounts as follows, viz: To acquire by purchase or otherwise, either the road and property now known as the eastern division of the La Crosse and Milwaukee Railroad Company, or any bonds secured by mortgage thereon, the sum of $4,000,000, which shall be subdivided as follows: Into the preferred stock in the third section named, and in addition thereto and as a part thereof, $2,750,000 or 27,500 shares, of which $2,000,000 or 20,000 shares shall be designated as scrip preferred stock of the same class, and to be issued and used in the same manner as is provided in the third section
1156 hereof. The balance of said $4,000,000 increase—$1,250,000 or 12,500 shares—shall be in addition thereto, and as a part

thereof, of the common stock, as provided in said third section. And if at time the directors deem it for the best interests of this company to acquire, by purchase or otherwise, the road and property now known as the Milwaukee and Western Railroad, or any bonds of said road, secured by mortgage thereof, then and to that end, and for the construction thereof from Columbus to Portage, and also for completing the line of said road from its present western terminus at or near Sun Prairie to the city of Madison, in Dane county, the directors are hereby authorized to increase the capital stock and to issue the same amount of bonds, preferred stock, scrip stock, and common stock, as last above named.

Section 5. This corporation shall have all the powers, privileges, and immunities of railroad companies under the laws of the State of Wisconsin; and especially to sue and be sued, to acquire, use and sell, bargain and convey all kinds of property, real and personal, necessary or convenient to operate, use, and maintain said railroad, or the part or the whole of any other railroad hereafter acquired by them within the State of Wisconsin; to make any by-laws for the government and management of the corporation or its officers, not contrary to the laws of *of* Wisconsin or of the United States. And they are hereby invested with all the powers, privileges, and immunities which are necessary or convenient to carry into effect
1157 the purposes and objects of this corporation. They are hereby authorized to transport, take and carry property and persons by railway, by force and power of steam or of animals, or of any mechanical or other power, or of any combination of them, which said company may choose to apply, and from any part of the city of Milwaukee to the Mississippi river, and to and across said river, and to and from all intermediate places. They are also authorized and empowered to lease, buy, purchase, receive, hold, use, sell, and convey all the property and franchises, furniture and equipments, real and personal, of the La Crosse and Milwaukee railroad, so called, the Milwaukee and Minnesota Railroad Company, and the Milwaukee and Western Railroad Company, or of any other railroad company to which either of the above-named companies is a successor; also the capital stock of either of them, and any or all mortgage bonds or other evidences of debt made by either of them; and when purchased by this company they shall have all the legal and equitable rights that the holders thereof had before their sale to this company; also to support, maintain, hold, use, sell, and convey one or more steam ferry-boats, to be used on the Mississippi river; also to purchase, hold, use, sell, and convey upon this line of railway, or elsewhere, any materials, engines, cars, steam ferry-boats, and any other property, real or personal, necessary or convenient for this corporation, and for their use in transporting persons, goods, and prop-
1158 erty; to purchase, receive, and hold, and to sell and convey, such real estate as may be necessary and convenient in accomplishing the object for which this company is incorporated. This company shall also have all the powers, rights, privileges and equities which are or were had by the La Crosse and Milwaukee Railroad

Company, to acquire, receive, hold, bargain, sell and convey lands; and they shall also have power to purchase, acquire, receive, hold, bargain, grant, sell and convey all or any part of the lands, or the appurtenances thereto, which may be acquired by said corporation; also to fix, regulate, and receive the tolls and charges by them to be received for transportation of persons or property. They shall have power to build and construct any new line of railway necessary or convenient in straightening the old line, or in extending it so as to conform to the requirements of the charters of either of the companies herein named, or with the law of the State, and to build or extend their line of railway in such manner, and from and to such place or places, as the directors deem for the best interest of the company; but no expenditure shall be made for this purpose unless it is from the surplus earnings of the company, after providing for the payment of interest on all its mortgage debt then outstanding.

Section 6. The corporation shall have power to issue bonds, in sums of $500 and $1,000, to an amount not exceeding two million two hundred thousand dollars, unless the company shall purchase or acquire either the said eastern division of the La Crosse and Milwaukee, or some
1159 or all of the bonds which are a lien thereon, known as first mortgage, eastern division, city of Milwaukee mortgage, or the second mortgage, so called, of said eastern division, in which event the corporation is authorized to issue an additional amount of said bonds not exceeding two millions of dollars; and unless the corporation shall purchase or acquire either the said Milwaukee and Western railroad, or some or all of the bonds which are a first lien thereon, and shall build, or undertake to build, or extend said road from Columbus to Portage, and the main line thereof from its present western termini to the city of Madison, then, in that event, the corporation is authorized to issue an additional amount of said bonds not exceeding two millions of dollars. All of said bonds shall bear an interest of seven per cent. per annum, the principal and interest payable in the city of New York, the interest semi-annually, the principal in the year 1893; they shall also contain a provision that if the company make default in the payment of interest, or in the application of the sinking fund, as hereinafter provided, for six months, the principal shall thereupon become due, without demand or notice. The said corporation shall have power to secure the payment of all the bonds above authorized to be issued, by a mortgage or trust deed upon this franchise, and all the real and personal property of the company now owned or to be hereafter acquired by them, and to embrace the entire corporate property, and all its franchises and privileges. The mortgage shall also contain a provision for a
1160 sinking fund for the payment of said mortgage bonds by which the new company shall obligate themselves to pay to the trustees of said mortgage bonds, all such sums of money, less the expenses of sales, as shall be derived from the sale of any lands which may have been, or shall hereafter be, donated or granted, by either the United States or the State of Wisconsin, to aid in building this road, or that shall in any manner be acquired by this company. And

said lands shall be fairly and equitably valued and classified by the trustees named in the mortgage and by the company, or by such person as they together shall appoint; and upon sale of said lands said mortgage bonds may be received at par, and accrued interest in payment therefor, and the bonds thus received in payment shall be immediately cancelled. And said trust deed shall contain all other reasonable and proper provisions for making said lands the most productive and available to the company as a sinking fund for the payment of said bonds. The trustees of said mortgage shall, immediately after any payment in money is made them, designate, by lot, so many of the bonds as they have money to pay, to which the sum received by them shall be applied in payment. They shall give notice of the number of the bonds designated, in two or more of the newspapers of the city of New York, and after the first day of the succeeding January or July in each year the interest on the bonds so designated shall cease, and neither the company or their successors shall be any longer liable for the payment of the interest
1161 or principal thereof. Said trustees shall, on said first day of January and July, pay the principal and interest of said bond, and cancel and surrender the same to the company. The company shall keep a proper registry or account of all the bonds thus paid by them, or designated to be paid as aforesaid; and the number or amount of bonds thus cancelled shall be reported by the said company to the stockholders at each annual meeting, and said bonds shall be presented and shown at said meeting. The bonds secured by said mortgage shall be convertible at the option of the holder into the preferred stock, at any time within ten days after any dividend shall have been declared and become payable on said preferred stock. The said mortgage deed and bonds shall be signed by the president, or vice president, and secretary, and the seal of the company shall be affixed thereto. And, except as herein expressly provided, the corporation shall have no power or authority to mortgage or otherwise encumber their property, real or personal, unless the assent be in writing of a majority in interest of the owners and holders of all the capital stock issued by said corporation, shall be first had and obtained, authorizing the same. No assent shall be taken from agents or by proxy, unless the power of attorney held by the agent shall expressly authorize the particular assent asked for. And in the event of this company acquiring the said eastern division of the La Crosse and Milwaukee railroad, the said mortgage or trust deed shall also contain a
1162 provision requiring so many of the above mortgage bonds above authorized to be issued as are reserved for the payment of the first mortgage eastern division, to be cancelled from time to time, as the present sinking fund on that mortgage shall have cancelled of that mortgage. The said mortgage or trust deed may also contain covenants and agreements authorizing the bondholders to vote in all stockholders' meetings, as follows: each one hundred dollars of the principal of the outstanding bonds shall be entitled to one vote, and giving the bondholders the same *pro rata* voice in the management

of the company with, as if they were stockholders to the amount of their bonds.

Section 7. The immediate government and direction of the affairs of the company shall be vested in a board of not less than nine directors; and after the present directors' time expires, they shall be chosen by the stockholders of said company in the manner hereinafter provided, and shall hold their office until the next annual meeting of the company, or until others are duly elected and qualified to take their places as directors. The preferred stockholders shall elect the directors until a dividend shall have been earned, declared, and paid on the common stock; and until then the common stockholders shall have no vote or voice in the election of directors. The said directors shall elect one of their number president of the board, who shall also, by virtue thereof, be president of the company, and shall also elect a vice president from one of their number.

1163 They shall also appoint a secretary and such other officers or agents as the necessity or convenience of the company require. A majority of the directors of the company shall constitute a quorum to do business; a less number may adjourn from time to time. In all meetings of the stockholders of said company each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person or by lawful proxy. But this shall not authorize a common stockholder to have a vote for the choice of directors until a dividend has been paid on the common stock, as above provided. In case it shall so happen that an election of directors shall not be made on the day appointed for that purpose, said corporation shall not for that cause be dissolved, but said election may be had on any day to which the stockholders shall adjourn, or which shall be appointed by the directors. And said directors shall have power to fill any vacancy which may occur in their board by death, resignation, or otherwise. The said directors shall have power to make and prescribe such by-laws, rules, and regulations as they shall deem proper and needful touching the disposition and management of the stock, property, estate, and effects of said company, the transfer of shares, the duties and conduct of their officers, agents, and servants, and all matters whatever which may appertain to the concerns of said company, not contrary to those established by the stockholders or to this act, or to the laws of the State of Wisconsin or of the United States. Also to petition and apply for any law of

1164 the State of Wisconsin in alteration hereof; but such alteration shall not be binding on the company unless accepted by the board of directors.

Section 8. The certificates of stock issued by this company shall, upon their face, be made subject to all the terms and conditions of this act.

Section 9. Upon the dissolution of this corporation, after the payment of all its debts, the remaining assets shall be divided among the different class of stockholders according to their preferences, that is o say: the preferred stock shall be first paid in full, and the balance divided among the common stockholders *pro rata*. But this corpora-

tion shall not be dissolved by any act of the company without an affirmative vote of two-thirds of each class of stockholders.

Section 10 Annual meetings of the stockholders for the choice of directors shall be held in the State of Wisconsin in the month of May in each year after 1863, which meeting shall be called by the board of directors, who shall specify the time and place for holding the same, likewise the manner in which the stockholders shall be notified thereof.

Section 11. The said corporation hereby created are hereby obligated to issue to each farm mortgagor (or his assigns) who has heretofore mortgaged his lands adjacent to the line of the La Crosse and Milwaukee railroad, or such part of it as shall be acquired by this corporation and given to aid in constructing that part or division
1165 of road coming into possession of this corporation, and who has not heretofore received any compensation or consideration from any of the predecessors of this corporation for giving said mortgage other than scrip or unpaid shares of capital stock or receipts or orders on their books entitling them to stock—full paid common stock—in this corporation to the amount of the mortgage given by him, exclusive of interest, whenever the said farm mortgagor or his assigns pays, settles, or ratifies the mortgage so given as aforesaid.

Section. 12. This act shall take effect and be in force from and after its passage and publication.

Exhibit B.

State of Wisconsin.—In assembly.—No. 321, A.

March 13. Introduced by Mr. Larkin. Read first and second times, and referred to committee on railroads.

A BILL to incorporate the bondholders of the western division of La Crosse & Milwaukee Railroad Company.

Whereas in the judgment of this legislature the objects of the corporation hereby created cannot be attained under general laws, therefore the people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

1166 Section 1. That Isaac Seymour, N. A. Cowdrey, Horace Galpen, William Gould, David M. Hughes, Frederick P. James, Russell Sage, and George Smith, of New York; Alexander Mitchell, Hans Crocker, Asabel Finch, George W. Rogers, of Wisconsin; and Selah Chamberlain, of Ohio, and their associates, successors, and assigns, are hereby created a body corporate and politic, under the name and style of the Milwaukee and Saint Paul Railway Company, and by that name and style may sue and be sued, plead and be impleaded, defend and be defended in all courts of law and equity in this State or elsewhere; and they may adopt, make, have, and use a common seal, and may change, renew, and alter the same at pleasure.

Section 2. The corporation hereby incorporated is authorized and empowered to purchase the western division of the La Crosse and Milwaukee Railroad Company, so called, lying and being between the city of La Crosse, on the Mississippi river, and Portage City, in

the county of Columbia, in this State, and which division of road is now advertised to be sold under and in pursuance of a decree of foreclosure of the mortgage or trust-deed executed by the said La Crosse and Milwaukee Railroad Company, to secure the bonds of said company held by the corporator or some of them hereinbefore named. And the said corporation is likewise empowered and made capable, in law and in equity, to purchase and hold in addition to said western division of
1167 the La Crosse and Milwaukee Railroad Company, so called, all kinds of property which may be necessary for the use and operation of their said railroad; and in like manner they are hereby authorized and empowered, after the purchase of said western division, and acquiring title thereto, to use and operate the same; and said corporation, its successors and assigns, shall have and acquire by the purchase thereof, and shall exercise and enjoy thereafter, all and the same rights, privileges, grants, franchises, immunities, and advantages, in and by the said mortgage or trust-deed enumerated and conveyed, which belong to and were employed by the La Crosse and Milwaukee Railroad Company, who executed the same, so far as the same relate and appertain to that portion of said road, or the line thereof, mentioned and described in and conveyed by said mortgage or deed of trust, and as fully and as absolutely in all respects as the corporators, shareholders, officers, and agents of the said La Crosse and Milwaukee Railroad Company might or could have done theretofore, had not the sale or purchase taken place.

Section 3. The said corporators named may organize this corporation at such time and place and upon such notice and in such manner as a majority of them shall agree upon, and they shall choose one of their number to be president of the company; and the said corporators shall constitute the first board of directors, and shall hold their office for one year and until others are elected; and the president thus elected shall not only be the president of the com-
1168 pany, but of the board of directors, shall constitute a quorum to do business.

Section 4. There shall be, after the first year, an annual election by the stockholders of the corporation, for the purpose of electing a board of directors, notice of which shall be given; and the number of directors to be elected, as well as the other officers of the corporation, shall be in accordance with and in conformity to the provisions of the charter of the La Crosse and Milwaukee Railroad Company.

Section 5. The capital stock of this corporation shall be four millions and two hundred thousand dollars, to be divided into forty-two thousand shares of one hundred dollars each; and the said corporation is hereby authorized and empowered, in the distribution or disposition of the stock to such parties as may be interested in the purchase of the said western division of the La Crosse and Milwaukee railroad, or to other parties, to classify the stock in such number of grades as may be deemed necessary by the board of directors, in order to make an equitable adjustment of the claims against said western division, as the board of directors shall deem for the best interests of the corporation.

Section 6. This act shall take effect and be in force from and after its passage and publication.

(Filed May 1, 1863.)

And on same day, substitution of Messrs. Ryan & McGregor filed as follows, to wit:

1169 District Court of the United States.

GREENE C. BRONSON, JAMES T. SOUTTER and SHEPHERD KNAPP
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, *et. als.*

I hereby substitute Ryan & McGregor as solicitors for the defendants, William Crawshay and Orville Oddie, in my place and stead, 1st May, 1863.

JAMES S. BROWN.

And on the same day exceptions to report of sale by Marshal, filed by William Crawshay and Orville Oddie, as follows, to wit:

1170 *Exceptions to Marshal's report by Crawshay and O. Oddie.*

In the district court of the United States, for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER and SHEPERD KNAPP
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, *et. als.*
} Foreclosure.

Exceptions taken by the defendants, William Crawshay and Orville Oddie, on behalf of themselves and of Francis Vose, Robert W. Milbank, Isaac M. Millbank, and Christopher R. St. George, holders of bonds secured by the mortgage mentioned in the pleading, and *cestui que* trusts of the complainants, to the report of D. C. Jackson, esq., marshal of the United States for the said district, of the sale of the mortgaged premises in this cause reported by him to have been made on the 25th day of April, 1863, by his report filed in this court on the 27th day of April, 1863.

1st exception. For that the said report of the said marshal should not have been made to this court, but should have been made to the circuit court of the United States for this district, by order of which last mentioned court
1171 made therein in this cause on the 10th day of January, 1863, the said marshal was authorized and directed to make the sale reported by him in his said report; this court then having no jurisdiction to order a resale of the mortgaged premises mentioned in the decree.

2d exception. For that it appears by the said report that the said marshal did not give due and sufficient public notice of such sale, in this: that the said marshal, having previously made sale of the mortgaged premises under and in pursuance of the decree of this court in this cause, had no authority to resell the same except by the order of the circuit court aforesaid, yet the said marshal gave notice of such sale in this court only at a time when the jurisdiction to execute the said decree was vested exclusively in the said circuit court, and gives no notice of such sale under the said order of the said circuit court.

3d exception. For that the said marshal in his said report reports no legal or satisfactory evidence of having given such public notice, by advertisement in any newspaper in the city of New York, as required by the said decree.

1172 4th exception. For that, in and by the said report of the said marshal, it does not appear that the purchasers have paid to him the full amount of their bids reported by him.

5th exception. For that it appears by the evidence furnished to this court in support of these exceptions, and by the pleadings, evidence, papers, and proceedings in this cause, that the sales reported by the said marshal of the mortgaged premises were made to William Wallace Pratt and William H. White, in fraud of the rights of the owners of the bonds secured by the mortgage mentioned in the pleadings and decree, which were paid to the said marshal by or for the said purchasers, or some of them ; and that the said sales should not be confirmed to the said William Wallace Pratt and William H. White, or either of them.

6th exception. For that it appears by the evidence furnished to this court in support of these exceptions, and by the pleadings, papers, evidence, and proceedings in this cause, that the sales reported by the said marshal of the mortgaged premises were
1173 made to William Wallace Pratt and William H White in fraud of the rights and duties of Isaac Seymour, Horace Galpin, Nathaniel A. Cowdrey, Frederick P. James, William Gould, David M. Hughes, and Francis Vose, trustees and attorneys of the bondholders, whose bonds were paid to the said marshal upon such sales, and of the trusts established and declared by the agreement between the assenting creditors of the La Crosse and Milwaukee Railroad Company, for the purchase of the said road and the organizing a new corporation for the benefit of the purchasers, made October 3d, 1861; and that the said sales should not be confirmed to the said William Wallace Pratt and William H. White, or either of them.

7th exception. For that it appears by the evidence furnished to this court in support of these exceptions, and by the pleadings, evidence, papers, and proceeding in this cause, that the said William Wallace Pratt and William H. White purchased at the said sale in the right of Isaac Seymour, Horace Galpin, Nathaniel A. Cowdrey, Frederick P. James, William Gould, David M. Hughes, and Francis Vose, trustees and attornies of the said bondholders under the said agreement of the 3d day of October, 1861; and that the said sales
1174 so reported by the said marshal ought not to be confirmed by the court, unless so confirmed to the said Isaac Seymour, Horace Galpin, Frederick P. James, William Gould, David M. Hughes, Nathaniel A. Cowdrey, and Francis Vose, as such trustees and attorneys of the said bondholders under the said agreement of the 3d day of October, 1861, in the place and stead of the said William Wallace Pratt and William H. White.

8th exception. For that it appears by the evidence furnished to the court in support of these exceptions, and by the pleadings, evidence, papers, and proceedings in this cause, that the sales reported by the said marshal of the mortgaged premises to the said William Wallace Pratt and William H. White were made upon bids by them in the right of the real complainants in this cause, the *cestui que* trusts of the nominal complainants, in fraud of the rights and remedies ac-

cruing or to accrue from a sale of the mortgaged premises to the complainants or their *cestui que* trusts; and that the said sale should not be confirmed to the said William Wallace Pratt and William H. White, or either of them.

1175 9th exception. For that it appears by the evidence furnished to the court in support of these exceptions, and by the pleadings, evidence, papers, and proceedings in this cause, that the said sales so reported by the said marshal to the said William Wallace Pratt and William H. White were made upon bids by them made in fraud of the rights of the plaintiffs in a certain action depending in the supreme court of the State of New York, in and for the city and county of New York, wherein William Crawshay, Isaac M. Millbank, Robert W. Millbank, Orville Oddie, Christopher R. St. George, and Francis Vose are plaintiffs, and Isaac Seymour, Horace Galpin, Nathaniel A. Cowdrey, Frederick P. James, William Gould, David M. Hughes, Russell Sage, and Selah Chamberlain, and Greene C. Bronson, James T. Soutter, and Sheperd Knapp, trustees, are defendants, and in fraud of the authority, the jurisdiction, process, and orders of that court, and for the purpose of avoiding the jurisdiction of that court to enforce the due execution of the trusts established by and declared in the said agreement of the 3d day of October, 1861; and that the said sales should not be confirmed to the said William Wallace Pratt and William H. White, or either of them.

1176 10th exception. For that it appears, as aforesaid, that the said sales to the said William Wallace Pratt and William H. White were made in the right of the said Isaac Seymour, Horace Galpin Nathan A. Cowdrey, Frederick P. James William Gould, David M. Hughes, and Francis Vose, as trustees and attornies of the owners of the bonds paid to the marshal upon such sales, upon and subject to the trusts created and declared by the said agreement of the 3d day of October, 1861, for the purpose and with the effect of avoiding the responsibility of the said trustees and attornies, and the jurisdiction and authority of the court in the said action so depending in the said supreme court of the State of New York, in and for the city and county of New York, brought and pending to enforce the due execution of the said trusts and to prevent and restrain a violation of the said trusts; and that the said sales so reported by the said marshal ought not to be confirmed by this court, unless so confirmed to and in the names of the said Isaac Seymour, Horace Galpin, Frederick P. James, William Gould, David M. Hughes, Nathaniel A. Cowdrey, and Francis Vose, as such trustees and attornies under the said agreement of the 3d day of October, 1861, in the place and stead of the said William Wallace Pratt and William H. White.

1177 11th exception. For that it appears by the said marshal's report, and by the pleadings and proceedings in this cause, that William Wallace Pratt, one of the purchasers reported by the said marshal, has been and is one of the solicitors for the complainants in this cause; and that the said sales should not be confirmed to the said Pratt, but if confirmed, should be confirmed to his clients

in this cause, or their cestui que trusts, or the said trustees and attorneys of such cestui que trusts under the said agreement of the third day of October, 1861.

12th exception. As to the sale of the lands ordered to be sold by the decree in this cause. For that the said marshal shows in and by his said report that he did not offer for sale or sell any known or specified tract or tracts of land, or land by any description by which the land sold was capable of being identified, or land by any description by which a title would pass in a deed of conveyance, but did offer for sale, and sell an uncertain vague and undefined claim of title to all the lands granted or intended to be granted to the La Crosse and Milwaukee Railroad Company under the acts of Congress and of the State legislature, mentioned in the pleadings, without making
1178 it appear whether the said railroad company had acquired any, and what title to any, and what quantity of such lands, and what lands.

13th exception. As to the sale of the lands ordered to be sold by the decree in this cause. For that the said marshal having so offered for sale and sold such lands by a description calculated to deter bidders thereon, so sold the same for a grossly inadequate price.

14th exception. As to the sale of the railroad and its appurtenances, ordered to be sold by the said decree. For that the said marshal offered for sale and sold the said railroad and its appurtenances under a description vague and uncertain as to the quantity and amount of the appurtenances and rolling stock appertaining to the railroad so sold, and the encumbrances thereon and as to the extent and nature of the franchises appurtenant to the railroad so sold.

15th exception. As to the sale of the railroad and its appurtenances ordered to be sold by the said decree. For that the said marshal so offered for sale and sold the said railroad and its appurtenances under a decree of this court which does not determine or settle the franchise or right of possession to be acquired by the purchaser of the
1179 premises so to be sold, and which is too uncertain to be executed according to the established principles of equitable jurisprudence.

16th exception. For that the said marshal reports that he offered for sale and sold the said railroad and its appurtenances and franchises, and the said lands granted by the said acts of Congress and of the State legislature, separately; whereas the lands so sold and the right of the said railroad company thereto, or to a great part thereof, are incident to the franchises so separately sold and cannot pass to a purchaser unless with the franchise and as an incident thereto.

Wherefore the said defendants, William Crawshay and Orville Oddie, except as aforesaid to the said marshal's report of sale and thereupon pray the judgment of the court.

RYAN & McGREGOR,
Solr's and of Counsel for Defendants.
CRAWSHAY & ORVILLE ODDIE.

Filed May 1, 1863.

And afterwards, on the 2d day of May, 1863, came J. Abbot Helfenstein, by his solicitors, and filed his exceptions to marshal's report of sale as follows, viz.:

1180 District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, and others.

Exceptions taken by the said J. Albert Helfenstein to the report of D. C. Jackson, esq., marshal of the United States for the said district, of the sale of the mortgaged premises in this cause, reported by him to have been made on the 25th day of April, A. D. 1863, under and by virtue of the decree in this cause, made on the 13th day of January, A. D. 1862.

First. As to the sale of lands ordered to be sold by the said decree.

1st exception. For that the said marshal shows, in and by his said report, that he did not offer for sale or sell any known or specific tracts of land, but did offer for sale and sell a vague and undefined claim or title to all the lands granted or intended to be granted to the said La Crosse and Milwaukee Railroad Company by the acts of Congress and of the State legislature, without its appearing whether the said railroad company had acquired any title to any, and what quantity of such lands.

2d exception. For that the said marshal so sold the said
1181 lands for a wholly inadequate price, under circumstances to deter bidders from bidding an adequate price therefor.

Second. As to the sale of the railroads, appurtenances, and franchises ordered to be sold by said decree.

3d exception. For that the said marshal reports that he sold the mortgaged premises last mentioned for a wholly inadequate price, under circumstances to deter bidders from bidding an adequate price therefor, as appears by the evidence filed in this cause.

4th exception. For that the said marshal shows, in and by his said report, that he so sold the mortgaged premises last mentioned by a vague and uncertain description, not indicating the extent of the estate or franchise so sold, or the rights of a purchaser thereunder.

5th exception. For that it appears by the evidence in this cause, that the purchasers of the mortgaged premises at the sale purchased the same under a combination to make such purchase so great and extensive as to deter bidders, and prevent competition at said sale.

6th exception. For that it appears by the evidence in this cause, that the purchasers of the mortgaged premises at the said sale purchased the same under a combination to connect the railroad so purchased with another railroad, and to sever the same wholly or in part from the eastern division of the La Crosse and Milwaukee railroad, and thereby to sever the franchises of the La Crosse and Milwaukee

1182 Railroad Company, and to injure the interests of all persons in the said eastern division, against the terms and policy of the charter of the said railroad company.

7th exception.—For that this defendant, as appears by record in this cause, has appealed from the final decree herein to the Supreme Court of the United States, and that no confirmation of said sale ought to be made pending such appeal.

8th exception.—For that the advertisement of sale and the notices of the adjournment therefor were informal and insufficient; the proofs of the advertisement of said sale are informal and insufficient, and said report is informal and insufficient, and said sale was irregularly made, and made without authority of law, and should therefore be set aside.

9th exception.—For that the application to confirm said sale is premature under the rules and practice of this court.

Wherefore the said J. Albert Helfenstein excepts to the said marshal's report, and humbly prays that the same, and the sale thereby reported, may not be confirmed, but may be altogether set aside.

BUTLER, BUTTRICK & COTTRILL and
PALMER & STARK,
Sol'rs for J. Albert Helfenstein.

1183 And on the same day came the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, by their solicitor, and filed exceptions to the report of sale by the marshal as follows, to wit:

1184 In the district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP	
vs.	In equity.
THE LA CROSSE and MILWAUKEE RAILROAD COMPANY, *et als.*	

Exceptions taken by the defendants, The Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, to the report of D. C. Jackson, esq., marshal of the United States for the said district, of the sale of the mortgaged premises in this cause reported by him to have been made on the 25th day of April, 1863, by his report filed in this court on the 27th day of April, 1863:

1st exception.—For that the said report of the said marshal should not have been made to this court, but should have been made to the circuit court of the United States for this district, by order of which last-mentioned court made therein in this cause on the 10th day of January, 1863, the said marshal was authorized and directed to make the sale reported by him in his said report; this court then
1185 having no jurisdiction to order a resale of the mortgaged premises mentioned in the decree.

2d exception.—For that it appears by the said report that the said marshal did not give due and sufficient public notice of such sale, in this: that the said marshal having previously made sale of the mortgaged premises under and in pursuance of the decree of this court in this cause, had no authority to resell the same except by the order of the circuit court aforesaid, yet the said marshal gave notice of such sale in this court only, at a time when the jurisdiction to execute the said decree was vested exclusively in the said circuit court, and gives no notice of such sale under the said order of the said circuit court.

3d exception.—For that the said marshal in his said report, reports no legal or satisfactory evidence of having given such public notice by advertisement in any newspaper in the city of New York, as required by the said decree.

4th exception.—For that in and by the said report of the said marshal it does not appear that the purchasers have paid to him the full amount of their bid reported by him.

1186 5th exception.—As to the sale of the lands ordered to be sold by the decree in this cause.

For that the said marshal shows in and by his said report that he did not offer for sale, or sell any known or specified tract or tracts of land, or land by any description by which the land sold was capable of being identified, or land by any description by which a title would pass in a deed of conveyance, but did offer for sale, and sell an uncertain, vague, and undefined claim of title to all the lands granted, or intended to be granted, to the La Crosse and Milwaukee Railroad Company under the acts of Congress and of the State legislature, mentioned in the pleadings, without making it appear whether the said railroad company had acquired any and what title to any and what quantity of such lands and what lands.

6th exception.—As to the sale of the lands ordered to be sold by the decree in this cause.

For that the said marshal having so offered for sale and sold such lands by a description calculated to deter bidders thereon. So sold the same for a grossly inadequate price.

7th exception.—As to the sale of the railroad and its appurtenances, ordered to be sold by the said decree.

1187 For that the said marshal offered for sale and sold the said railroad and its appurtenances under a description, vague and uncertain as to the quantity and amount of the appurtenances and rolling stock appertaining to the railroad so sold, and of the incumbrances thereon, and as to the extent and nature of the franchises appurtenant to the railroad so sold.

8th exception.—As to the sale of the railroad and its appurtenances ordered to be sold by the said decree.

For that the said marshal so offered for sale and sold the said railroad and its appurtenances under a decree of this court which does not determine or settle the franchises or right of possession to be acquired by the purchasers of the premises so to be sold, and which is too uncertain to be executed according to the established principles of equitable jurisprudence.

9th exception.—For that the said marshal reports that he offered for sale and sold the said railroad and its appurtenances and franchises, and the said lands granted by the said acts of Congress and of the State legislature separately; whereas the lands so sold and the right of the said railroad company thereto, or to a great part
1188 thereof, are incident to the franchises so separately sold and cannot pass to a purchaser unless with the franchise, and as an incident thereto.

10th. The said defendants further object to any confirmation of said sale, because by rule 6 of the rules of practice for the courts of equity of the United States, prescribed by the Supreme Court of the United States, it is provided as follows: "All motions for rules or orders and other proceedings, which are not grantable, of course, or without notice, shall, unless a different time be assigned by the judge of the court, be made on a rule day and entered in the order-book, and shall be heard at the rule day next after that on which the motion is made," and because no motion for order confirming said sale has been made on a rule day or on any other day assigned by the judge of said court for that purpose, and because the time prescribed by said rule for the defendant to make objections and exceptions to said report has not elapsed and will not elapse till the next rule day after the rule day on which the motion may be made according to said rule.

11th. That the said lands sold for only a nominal sum, in
1189 consequence of the opinion of the judge of this court hereafter printed by him as follows:

Land grant mortgage.

In the district court of the United States for Wisconsin.—Opinion of Judge Miller.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPARD KNAPP
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

An act of Congress, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State, approved June 3, 1856, granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line; every alternate section of land designated by odd numbers for six sections in width on each side of said road respectively, with the privilege to the State to have other lands selected in lieu of such as may be sold or pre-empted before the line of road is definitely fixed. It is provided that the land granted shall be exclusively applied in the construction of

that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever.

1190 The act further directs that the lands granted to the State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other; and shall be disposed of by said State only in the manner following: That a quantity of land not exceeding one hundred and twenty sections and included within a continuous length of twenty miles of road, may be sold; and when the governor of the State shall certify to the Secretary of the Interior that any twenty continuous miles of railroad are completed then another like quantity of land may be sold; and so on from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made.

The act does not contemplate the issuing of a patent to the State. It conveys the fee of the land to the State, subject to the prescribed manner of disposition by the State. It is a higher evidence of title, as it is the direct grant of the fee, which had been in the United States, by the government itself, while a patent is only the act of its ministerial officer. Grigrion *vs.* Astor, 2 Howard, 319, 344. The State acquired title to the lands granted by the act, but could dispose of them only in the manner therein designated. The State could not grant or convey a legal title in any manner inconsistent with the only mode directed by the grant. The lands are a gift to the State, to aid the State in building railroads, subject to the

1191 restriction or limitation in the manner of their conveyance by the State, and to reversion to the United States if the roads are not completed within ten years.

The State legislature, by an act approved October 8, 1856, accepted the grant upon its terms, conditions, and restrictions. And by an act approved October 11, 1856, the State legislature granted the western division of the lands to the La Crosse and Milwaukee Railroad Company. The first section of this last act authorizes the La Crosse and Milwaukee Railroad Company to survey, locate and complete railroads from Madison, and from Columbus, by Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield. By the grant to the State, the road is to commence at Madison or Columbus; and, by this act, it is to be commenced at both places; but Madison is designated as the point of commencement of the road, for the purpose of estimating and selecting the lands.

By section 4 of the State act "For the purpose of aiding in the construction of said roads, all the interest and estate, present and prospective of the State in or to any and all lands granted by the government of the United States to the State, &c., together with all and singular, the rights, privileges, and immunities conferred

1192 or intended to be conferred by the said act of Congress are granted to the La Crosse and Milwaukee Railroad Company; provided that the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following: When-

ever twenty continuous miles of the said road shall have been completed so as to admit of running regular trains on the same, the governor shall certify to the Secretary of the Interior the fact that twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said land shall vest in the said La Crosse and Milwaukee Railroad Company; and when a second twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor shall certify as above, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company; and so on from time to time until said roads are completed. And the governor is authorized to execute, in the name of the State, whenever the company by virtue of this chapter shall be entitled to any of the lands, a deed in fee simple to any or all the land which the company shall be entitled. And the company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains of cars on the same, and so on from
1193 time to time so that the sales of land by the company shall never exceed six sections of land to every mile of road so completed.

The title to the lands passed by the grant from the United States into the State of Wisconsin, with the restriction that the lands shall be disposed of by the State only in the manner that a quantity of land not exceeding one hundred and twenty sections, within a continuous length of twenty miles of road may be sold; and when the governor shall certify to the Secretary of the Interior that any continuous miles of road are completed, then another like quantity of lands may be sold. By the act of the State legislature, the title only passes from the State into the company upon a condition different from that of the grant. The act directs that whenever twenty continuous miles of road shall have been completed, so as to admit of running regular trains, the governor shall so certify, and then the title to two hundred and forty sections shall vest in the company. The act does not require the twenty continuous miles of road to be made within the one hundred and twenty sections of land, as required by the grant, and on the completion of the first twenty miles, a quantity of land is to pass to the company double of that permitted by the grant to be sold. The grant was not intended to build railroads for the State, but to aid the State in making railroads; and it intended by
1194 the restriction in passing the title from the State, in such manner as to require the road made through the lands, to be made with the aid of the lands through which the road was located; both for the opening up and improvement of that portion of the State, and to secure to the United States double the minimum price of even sections within the limits of the grant.

The ninth section of the State act provides that the railroad company shall be capable in law of taking and holding the lands granted to the State, which shall be conveyed to the company by the act or deed, or by operation of law; and also mortgage or otherwise dispose of all their right, title, or interest, claims or demands, of, in, and to

the lands granted to the company by the act, or in any other estate, real or personal, of which they may be seized at the time of the execution of the mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper. The power here conferred on the company to mortgage any estate subsequently acquired is applicable to such property as the company may acquire outside of the grant.

By keeping the conditions of the grant in view, it will appear that the State had no power to mortgage in advance of title, and consequently she could not confer it on the company. The power
1195 to mortgage is embraced in the power to sell and convey, but it cannot exceed the restriction or condition of the power granted.

The La Crosse and Milwaukee Railroad Company, on the 31st day of December, 1856, executed and delivered to Greene C. Bronson, James T. Soutter, and Shepard Knapp, as trustees, a mortgage or deed of trust, reciting therein at length the acts of Congress and of the State legislature, to secure a sum of money not exceeding ten millions of dollars, in bonds of $1,000 each, which they had concluded to borrow for the purpose of constructing their road from Madison, by way of Portage City, to St. Croix river or lake. By the deed a lien was intended to be created on the road and road-bed and appurtenances, and it was also intended to grant, bargain, and sell, all and singular, the lands granted or intended to be granted to the company by the acts of Congress and of the legislature. It does not appear that, at the date of the deed, the company had acquired any title or right to a title to any portion of the lands.

It appears that on the 28th of December, 1857, Coles Rashford, the then governor of the State, transmitted his official certificate to the Secretary of the Interior "that forty continuous miles of the road which the La Crosse and Milwaukee Railroad Company is authorized and
1196 required to construct by the provisions of the acts, &c., extending from the point of intersection of the road described in the said acts, with the section division of the La Crosse and Milwaukee Railroad at Portage City, westwardly to a point on the line of said road, &c., have been completed as required, &c. The governor did not certify that any portion of the road so certified to have been made run through any portion of the lands granted to the State. It cannot, I apprehend, be claimed that the lands through which that forty miles of road run, being chiefly sold by the government, the company, under the grant, could select other lands in lieu of said lands so sold. The provision, I presume, was inserted in the grant to enable the State to select lands in lieu of such as may sold by the government or pre-empted, after the date of the grant, and before the several sections granted should be designated by the government, according to the actual location of the road. It is understood that the several sections have not been designated by the Commissioner of the General Land Office, and it appears that the governor has refused to make patents or deeds to the company for any portion of the land.

We know that the functions of the La Crosse and Milwaukee Railroad Company are suspended. If the company should reorganize, the legislature may modify the act by making it conform to
1197 the grant. If it should not reorganize, legislation may be necessary in relation to the disposition of the grant by another company or by the State. The act of the State does not confer any interest in the grant in a successor of the La Crosse and Milwaukee Railroad Company.

I do not intend by these remarks to convey the idea that bondholders under the deed of trust may not possibly have some equities. These remarks are made in reference to the several petitions for an order to adjourn the sale of the lands under the decree in this case. The real condition of the title to the lands had not been specifically brought to my notice when the decree was made; but even if it had, I presume the decree would have to follow the description of the mortgaged premises. The decree ordered the lands to be sold by the general description according to the mortgage. This is made an objection to the sale; but that objection is met by the act which directs that "within five years after the title shall have become vested in the company the lands, if any, shall remain unsold, shall be offered for sale in limited quantities to actual settlers."

The decree ordered the lands to be first sold, and afterwards the railroad and appurtenances, if the sale of the lands did not produce the amount of interest due and payable on the bonds. The
1198 court has no power to change or modify the decree, but by the consent of all the parties, which is not probable, as they are excessively litigious. If the lands should be bid off at a nominal amount, the court can, on the motion of any of the petitioners, set the sale aside. I think that, under the circumstances, this course will best subserve the interests of all parties, so that the legislature may correct former legislation, and provide for carrying out the grant by some company. The probability is that the portion of the road mortgaged may sell for enough to extinguish the debt.

The petitions will not be acted on by ordering the sale adjourned. A constant effort has been made by the court that the whole road should be sold at the same time, in hopes that it might pass into the hands of a responsible company for the interest of the public, but I fear from the present situation of affairs that the effort was in vain.

MAT. H. CARPENTER
Sol. for said defendants.

Filed May 2, 1863.

And afterwards, on the 4th day of May, 1863, came Charles Howard, assignee of Sebre Howard, and Lawrence G. Graham and Donald D. Scott, creditors and defendants, by their solicitor, and filed exceptions to the marshal's report of sale as follows, to wit:

1199 District court of the U. S., Wisconsin district.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP
vs.
The LA CROSSE and MILWAUKEE RAILROAD COMPNAY *et al.*

Charles Howard, assignee of Sebre Howard, and Lawrence G. Graham, and Donald D. Scott, judgment creditors and defendants in the above-entitled action, by Levi Hubbell, their solicitor, except to the report of sale of the mortgaged premises, made by the marshal of the district of Wisconsin on the 25th day of April, 1863; which report is now on file in the said court for the following reasons:

First. That, a sale of the mortgaged premises having been made by the said marshal, in pursuance of the decree in said action, on the 2d day of October, 1862, and the purchase price paid to him, and his report of said sale duly made and filed, and said sale not having been vacated or set aside by any court having jurisdiction of the case or parties, it was not competent for said marshal to make any second or other sale of said premises.

1200 Second. That the said sale of the date of the 25th April, 1863, was made by the said marshal without the order of authority of any court having jurisdiction of the case, or of the parties to said action.

Third. That the jurisdiction of the court and judge, by which the decree in said action was made and entered, having been taken away and annulled, as to said action and said decree, by act of Congress, it was not competent for said marshal, before said jurisdiction was, by a new act of Congress, conferred or restored, to take any step or do any act towards a sale under said decree.

Fourth. That the mortgage on which the decree in said action is founded, and said decree, and also said sale, are unauthorized by any law of the State of Wisconsin, and are in direct violation of the provisions of an act entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, &c." approved October 11, 1856.

LEVI HUBBELL,
Sol'r for judg't creditors above named.

Filed May 4, 1863.

1201 And afterwards, on the same day, the several exceptions to the sale of the mortgaged premises came on to be heard, and the hearing of said exceptions not being concluded, the further hearing was adjourned until to-morrow morning.

May 5, 1863. This day came the parties, by their counsel, and the argument of the several exceptions to the sale of the mortgaged premises by the marshal being concluded, it is ordered by the court that said exceptions be, and hereby are, overruled. And it is further ordered and decreed by the court that the said sale, so as aforesaid made, be, and hereby is, confirmed, and that the marshal make a deed to the purchasers.

And afterwards, on the 6th day of May, 1863, came Mr. Cary, on behalf of the Milwaukee and St. Paul Railway Company, and filed its petition in writing as follows, to wit:

1202 *Petition of Mil. & St. Paul Railway Co. for possession of whole road, and order of court, May 7, 1863, for joint occupancy.*

United States district court for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees, *vs.* LA CROSSE AND MILWAUKEE RAILROAD COMPANY, *et als.* } In equity.

To the Hon. Andrew G. Miller, district judge:

Your petitioner, the Milwaukee and St. Paul Railway Com-
1203 pany, respectfully shows, that it is a corporation duly organized by William Wallace Pratt and William H. White, the purchasers of the La Crosse and Milwaukee Railroad and its appurtenances, at the marshal's sale under the decree of this court in this cause, by virtue and in pursuance of chapter seventy-nine of the Revised Statutes of the State of Wisconsin concerning railroads.

That in pursuance of said sale and the confirmation thereof by this honorable court, Darius C. Jackson, the said marshal of the United States for the district of Wisconsin, on the fifth day of May instant, executed and delivered to said William Wallace Pratt and said William H. White a deed of said mortgaged premises.

That immediately thereafter said purchasers, William Wallace Pratt and William H. White, organized your petitioner as a corporation, under and by virtue of the provisions of said chapter seventy-nine of the Revised Statutes of Wisconsin concerning railroads, and on the said fifth day of May, instant, filed their articles of association in the office of the secretary of state of the State of Wisconsin, a certified copy of which said articles of association are herewith shown to this court, and to which your petitioner prays leave to refer.

That afterwards, and on the sixth day of May, instant, the said William Wallace Pratt and William H. White, under their hands and seals, executed and delivered to your petitioner, in due form of law, a deed of all and singular the said mortgaged premises aforesaid, conveyed to them by the said Darius C. Jackson, marshal as aforesaid, which said deed is herewith shown to this honorable court, and to which for greater certainty your petitioner prays leave to refer.

And your petitioner further shows, that Hans Crocker was appointed the receiver in this suit of said mortgaged property, and took possession thereof on the 11th day of June, in the year 1860; and your petitioner shows that the purposes for which he was appointed have been answered, and the duties of his office (save accounting and being discharged) are at an end, in consequence of a sale of the said mortgaged premises under the decree in this suit.

Your petitioner further shows, that said Hans Crocker, receiver of said mortgaged premises, is also the receiver of the eastern division of said La Crosse and Milwaukee Railroad, to wit, from the city of Milwaukee to Portage City, appointed under certain judgment creditors' bills filed against said La Crosse and Milwaukee Railroad
1204 Company, and also against the Milwaukee and Minnesota Railroad Company, and also in the foreclosure suit of Bronson and Soutter against said La Crosse and Milwaukee Railroad Company and others; that, as your petitioner is informed and believes, the mortgage of the franchise of the said La Crosse and Milwaukee Railroad Company to the said complainants, described in the bill of complaint in this cause, is a mortgage of the entire franchise, to use, operate, manage, and control said La Crosse and Milwaukee Railroad, for its entire length, from the city of Milwaukee to the city of La Crosse, and that the said mortgage is prior and superior to all the liens, claims, and incumbrances on said eastern division, by virtue of which, said Hans Crocker, as such receiver, now holds and operates such eastern division of said road; that, by the foreclosure of the complainant's said mortgage in this case, the sale and confirmation under said decree, the conveyance of the marshal to said William Wallace Pratt and William H. White, the purchasers at said sale, the organization of your petitioner by said purchasers under and by virtue of the provisions of chapter seventy-nine of the Revised Statutes of Wisconsin, concerning railroads, and the conveyances by said purchasers to your petitioner of all and singular the said mortgaged premises.

Your petitioner has succeeded to all the rights, privileges, franchises, and immunities of the original La Crosse and Milwaukee Railroad Company in running, operating, and controlling said railroad in its entire length, from the city of Milwaukee to the city of La Crosse, and that such rights so to run, operate, manage, and control the same is prior and superior to the rights of any of the defendants in this cause, and prior and superior to the rights of the mortgagees in the mortgage to said Greene C. Bronson and James T. Soutter on the eastern division, under which said Hans Crocker is acting as receiver, inasmuch as the said mortgage to the said complainants is prior in date and lien to the mortgage to said Greene C. Bronson and James T. Soutter.

And your petitioner is informed and believes that it is entitled, in virtue of the premises, to the possession, control, and management of the entire line of said railroad, from the city of Milwaukee to the city of La Crosse, and to run, operate, manage, and control as a railroad the whole line of said road, subject to the obligation to account and pay over to said receiver the net earnings and income of said eastern division under the order and directions of this honorable court.

1205 Your petitioner therefore prays that your honor will grant an order directing the said Hans Crocker, receiver as aforesaid, to deliver to your petitioner all and singular the said railroad from the city of Milwaukee to the city of La Crosse, its road-bed,

track, and locomotives, engines, rolling stock, tools, implements, supplies, together with its depots, station-houses, engine-houses, and all other property belonging to said railroad, or used in operating the same, now in the possession of or subject to the control of said receiver, together with its appurtenances, rights, and franchises thereto appertaining, and that your petitioner be let into the possession and enjoyment thereof, your petitioner hereby offering to account to said receiver for the net tolls and income of said eastern division, under the direction and supervision of this honorable court, and to submit to such rules and regulations in respect thereto as this honorable court shall make and establish, and for such further and such other order as the court may see fit to grant.

And your petitioners will ever pray, &c.

MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

1206 DISTRICT OF WISCONSIN, ss

David M. Hughes, being duly sworn, deposes and says, that he is the president of the Milwaukee and St. Paul Railway Company; that he has heard read the foregoing petition of the Milwaukee and St. Paul Railway Company, signed by said company; that he knows the contents thereof; and that the same is true of his own knowledge, except as to the matter stated therein on information and belief, and as to those matters he believes it to be true.

D. M. HUGHES.

Sworn to before me, May 6, 1863.

J. M. MILLER, *Clerk.*

And afterwards, on the 7th day of May, 1863, came the Milwaukee and Minnesota Railroad Company and Graham and Scott, by Mr. Carpenter, their solicitor, and filed the following, to wit:

Objection to hearing the petition of St. Paul Company.

In district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others. } In equity.

1207 The Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, come and object to any hearing of the petition of the Milwaukee and St. Paul Railway Company, filed May 6, 1863, until the same is reached, according to rule 6 of rules prescribed by the Supreme Court for practice in the courts of equity of the United States.

MATT. H. CARPENTER, *Solicitor.*

1208 Whereupon it is ordered by the court, (Mr. Carpenter on behalf of the Milwaukee and Minnesota Railroad Company, and

Mr. Ryan on behalf of William Crawshay and Orville Oddie, objecting.) that the receiver deliver over to the said Milwaukee and St. Paul Railway Company the said railroad and appurtenances between Portage City and La Crosse, and the rolling stock and property specially described in the decree.

And it is further ordered by the court, that a full and perfect inventory be taken by the receiver of all rolling stock other than the forty box cars specially mentioned in the decree, and of all personal property belonging to the said La Crosse and Milwaukee Railroad Company, including such as has been purchased by the receiver and now on hand, and that he make report of the same on the eighth day of June next.

And, as in pursuance of the act incorporating the La Crosse and Milwaukee Railroad Company, a continuous road has been constructed and operated between La Crosse and Milwaukee, and the interests of the public requiring that the said road as constructed and operated shall continue to be so operated, it ordered by the court, (reserving the right to rescind, change, or modify this order at any time hereafter,) that the said Milwaukee and St. Paul Railway Company and the receiver who continues to be the receiver of the eastern end or division of said La Crosse and Milwaukee Railroad between
1209 Milwaukee and Portage City, jointly operate said road between La Crosse and Milwaukee without interruption, and that the said Milwaukee and St. Paul Railway Company and the said receiver employ all the agents and persons necessary for the proper operating of said road; that the revenues of said road be paid to the receiver as heretofore, who shall keep all accounts and books for the inspection of the said company, and said company may keep duplicate books. And that all payments and disbursements for necessary expenses in operating said road shall be paid out of the joint fund, each division of said road to be entitled to its proportion of revenues, and to be charged its proportion of disbursements; and that the said receiver pay coupons of bonds on prior mortgages, as heretofore.

May 20, 1863. Receiver's report for month of April, 1863, filed.

June 10, 1863. Receiver's inventory, and report accompanying same, filed.

(The above entry appears of record, but no such paper appears of record or on file among the papers.)

And afterwards on the 11th day of June, 1863, came the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed an answer to the petition of the Milwaukee and St. Paul Railway Company for possession, &c., as follows, to wit:

1209½ District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, def'ts. } In equity.

The answer of the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, three of the defendants in the above-entitled cause, to the petition of the Milwaukee and St. Paul Railway Company, filed in the above-entitled cause on the 6th day of May, A. D. 1863.

These defendants, saving and reserving unto themselves all and all manner of benefit and advantage of exceptions to the many irregularities, uncertainties, and insufficiencies of said petition, and protesting that this court has no jurisdiction to hear said petition for answer thereunto, or unto so much and such part thereof as is or are material to be by them answered unto, answering, say:

That they have no knowledge, information, remembrance, or belief as to whether the said Milwaukee and St. Paul Railway Company is a corporation, and can neither admit nor deny the same, but leave said petitioner to such proof in that behalf as it may be able to make.

These defendants admit that Hans Crocker is receiver of the
1210 eastern division, so called, of the Milwaukee and La Crosse Railroad, so called, but say that he was not appointed such receiver in the above-entitled cause, but was so appointed in a cause in favor of said Bronson and Soutter, as complainants, against the La Crosse and Milwaukee Railroad Company and others, defendants, which action was a suit in equity to foreclose a mortgage on said eastern division, and in a suit in favor of one Howard against said last-named company and others.

These defendants deny that the said mortgage mentioned in the bill of complaint in this cause mortgaged or created a lien upon the whole franchise of said La Crosse and Milwaukee Railroad Company to use, operate, manage, and control said La Crosse and Milwaukee Railroad for its entire length from the city of Milwaukee to the city of La Crosse, and deny that said mortgage is prior and superior to all or any claims, liens, or incumbrances on said eastern division, and state that said mortgage did not in terms, nor was it intended to create any lien or incumbrance whatever upon said eastern division of said railroad, or the franchise of said La Crosse and Milwaukee Railroad Company to use, manage, operate, and control said eastern division, but that, on the contrary thereof, the premises, as to franchises conveyed in said mortgage, are conveyed only by the following words and description, that is to say: "And all and singular the rights, liberties,
privileges, and franchises of said railroad company of every
1211 kind and description relating to said roads," meaning the fol-

lowing roads, that is to say: from Madison, by way of Portage City, to the St. Croix river or lake between townships twenty-five and thirty-one, and from Portage City to La Crosse.

And these defendants deny that said petitioner has in any way become entitled to use, manage, or operate said eastern division of said railroad from Milwaukee to Portage or any part thereof.

These defendants further say that the said mortgage did not convey or mortgage, and was not intended to convay or mortgage, any of the rolling stock of said La Crosse & Milwaukee Railroad Company pertaining to said eastern division, and these defendants submit that rolling stock is not a franchise; and these defendants, on information, advice, and belief, state that there is no rolling stock covered by the said mortgage, unless it be the 40 box cars mentioned in the order of the court upon the master's report.

M. H. CARPENTER, *Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he is a director of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause, and makes this verification on its behalf; that he has heard read the foregoing
1213 answer, and knows its contents, and that the same is true, of his own knowledge.

A. FLEMING.

Subscribed and sworn to before me this 7th day of May, A. D. 1863. J. M. MILLER, *Clerk.*

Re-sworn to before me this 11th day of June, A. D. 1863.

EDWARD KURTZ,
U. S. Com., Dis't Wis.

And on the same day came the Milwaukee & Minnesota Railroad Company, and Lawrence G. Graham and Donald D. Scott, by their solicitor, Mr. Carpenter, and filed the following, viz:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

Here in court comes the said Milwaukee & Minnesota Railroad Company, Lawrence G. Graham and Donald D. Scott, and, protesting that the rights of the parties as to rolling stock is already
1214 *res adjudicata* between the parties to this suit, and that this court has no jurisdiction over or right to hear and determine the said petition of the Milwaukee and St. Paul Railway Company and protesting that a petition is not the proper proceeding to hear and determine the rights therein set forth:

Pray that, in case said court shall be of opinion that it has such jurisdiction, and that said right as to rolling stock claimed in said petition is not already *res adjudicata* as aforesaid:

That it may be referred to a master or masters to take proofs as to the matters and things set forth and the rights claimed in and by said petition to, and report thereon.

MATT. H. CARPENTER,
Solicitor for said Defendants above named, except said La Crosse and Milwaukee Railroad Company.

And the said petition was further argued by Mr. Carpenter for the objectors, and concluded by Mr. Lynde in support of the same. Mr. Ryan, on behalf of William Crawshay and Orville Oddie, objecting to said petition.

June 12, 1863.

1215 On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular
1216 the railroad between the city of La Crosse and Portage City, its road-bed and track, with its depots, station-houses, engine-houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree.

And also the share or proportion of the rolling stock and personal property purchased by the receiver as mentioned in the decree. And also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court. And it is further ordered by the court, that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under the appointment in this case, subject, however, to the final settlement of his accounts and subject to the orders made, or to be made, in this case and in the other cases in which he was appointed or may hereafter be appointed.

1217 June 23, 1863. Receiver's report for month of May, 1863. Filed.

In circuit court.

And afterwards, on the 6th day of July, 1863, came the defendants, William Crawshay and Orville Oddie, on behalf of themselves and of Francis Vose, Robert W. Milbank, Isaac M. Milbank, and Christopher R. St. George, holders and owners of bonds mentioned in the pleadings and decree in this cause by Ryan and McGregor, their solicitors, and filed in the circuit court their motion and accompanying papers, asking the court to make an order in this cause directing D. C. Jackson, esq., marshal of the United States for said district, to make his report, in writing, to this court, of the sale made by him of the mortgaged premises mentioned in the pleadings and decree in this cause under and by virtue of the said decree, and of the order of the court made on the 10th day of January, 1863, which sale was so made by the said marshal on the 25th day of April, 1863, which

motion will be founded on the record proceedings in this cause in this court, and in the district court of the United States for the said district, as follows, to wit:

1218 In the circuit court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

And now come the defendants, William Crawshay and Orville Oddie, on behalf of themselves and of Francis Vose, Robert W. Milbank, Isaac M. Milbank, and Christopher R. St. George, holders and owners of bonds mentioned in the pleadings and decree in this cause, by Ryan and McGregor, their solicitors, and move this court to make an order in this cause directing D. C. Jackson, esquire, marshal of the United States for said district, to make his report, in writing, to this court, of the sale made by him of the mortgaged premises mentioned in the pleadings and decree in this cause, under and by virtue of the said decree, and of the order of this court made on the 10th day of January, 1863, which sale was so made by the said marshal on the 25th day of April, 1863, which motion will be founded on the record, proceedings, and papers in this cause *in this cause* in this court, and in the district court of the United States for the said district.

RYAN & McGREGOR, *Solicitors.*

(Filed July 6, 1863.)

1219 Decree in western division.—Foreclosure cause.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862. Present, the honorable Andrew G. Miller, judge of said court presiding.

On the sixth day of the said term, to wit, on the thirteenth day of January, A. D. 1862, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin,

August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Ed-
1220 ward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, and John Nicholson.

In equity.

This day this cause came on to be finally heard at this term, upon the bill taken as confessed against the defendants, La Crosse and Milwaukee Railroad Company, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Avery Hill, A. V. Rudd, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Edward H. Brodhead, Joshua Hathaway, Charles Quentin, Lawrence G. Graham, Donald D. Scott, the Milwaukee and Minnesota Railroad Company, and Moses M. Davis, and upon the bill and the answers of the defendants, Selah Chamberlain, J. Alfred Helfenstein, trustee, in a mortgage or deed of trust of said company, defendants, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Burton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Tuft, Jonathan P. Hooper, D. S. Kingore, Noah Sturdevant, William H. Fessenden, John L. Southerland, E. Haskell Derby, Frederick Levick, Charles Shepard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vetchen, T. F. Bergen, John J. Vanderbilt, G. S. Boardman, and John Nicholson, and the replications thereto and proof,
1221 and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed by the court as follows, to wit: That the report of Winfield Smith, master, and of Jerome R. Brigham and Increase A. Lapham, special masters, appointed by this court, wherein the sum of six hundred and thirty-eight thousand seven hundred and seventy-nine dollars and seventeen cents appears to be due to said complainants at the date of said report, for interest on the bonds in the mortgage mentioned in this bill,

numbered from one to nineteen hundred and ninety-one, both inclusive, and one million nine hundred and ninety-one thousand dollars for principal on the said bonds; and also sixty-five thousand three hundred and twenty-one dollars and sixty-seven cents for interest on five hundred and nine of the said bonds included in said mortgage, numbering from nineteen hundred and ninety-two to twenty-five hundred, both inclusive, and two hundred and three thousand six hundred dollars for principal of the sum: and also one hundred and ninety-two thousand five hundred dollars for interest on fourteen hundred and fifty of said bonds of one thousand dollars each, included in said mortgage, numbered from two thousand five hundred and one to three thousand nine hundred and fifty, both inclusive, and on one hundred of said bonds mentioned in said mortgage, of five hundred dollars each, and numbered from one to one hundred, both inclusive, and also six hundred thousand dollars of principal of said bonds—which said several sums of interest, amounting to eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and the amount of principal of said bonds is found to be two millions seven hundred and ninety-four thousand dollars, be, and hereby is confirmed.

And it is further ordered, adjudged, and decreed by the court that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount due the complainants for principal and interest, and the costs in this cause, (and which be sold separately without material injury to the parties interested as hereinafter directed,) be sold at public auction, under the direction of the marshal for this district, unless the mortgagor, previous to such sale, pay into court the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and interest thereon from this date, together with the costs in this cause to be taxed.

1222 And it is further ordered that said sale be made at the post office in the city of Milwaukee, within this district, and that said marshal give public notice of the time and place of such sale by advertisement published in some newspaper in the city of La Crosse, and in the city of New York, once in each week for three months previous to the day of sale, and that the complainants, or the bondholders, or any of the parties to this cause, may become the purchaser thereof; and that the said marshal, after the confirmation of said sale by the court, execute a deed or deeds to the purchaser or purchasers of the mortgaged premises, and that the said marshal bring into court, for distribution among the bondholders and other lien creditors, the proceeds of said sale; and that the bonds secured by the mortgage described in this bill may be received in part payment of the proceeds of such sale, in the proportion as each bond at the principal thereof, for the amount thereof, according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

And it is further ordered, adjudged, and decreed by the court that the defendant, and all persons claiming or to claim from or under

them, be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises, and every part and parcel thereof.

And it is further ordered, adjudged, and decreed by the court that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof, to the extent allowed and granted by the said mortgage.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to or from the bill of complaint in this cause, is as follows, viz:

All and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said railroad company, from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said
1223 road, whether now made or to be made hereafter. And all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been, or may hereafter be, procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been, or may hereafter be, procured for or used in connexion with said roads, or either of them. And also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said road.

Also "all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed; and it is hereby declared to be the intention of the parties to these presents to convey and to vest in said parties of the second part all the property, real and personal, of said railroad company, to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing act of Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St.

Croix river or lake, had already been designated and conveyed to said railroad company."

With forty box-cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 268, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 292, 394, 396, 398, 400, 402, 404, 406, and 408, and such portion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-
1224 three cents, as the net revenues of the portion of road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to prior mortgages.

And it is further ordered by the court that the said described lands granted by the United States be first sold, and if the proceeds of the sale thereof shall be sufficient to pay and discharge the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, with interest from this date and costs, or if the said sum be released or satisfied or paid into court, further proceedings under this decree shall be stayed. And if, at any time hereafter, there should be any default in the payment of any interest due on said mortgage, or of the sum of two million seven hundred and ninety-four thousand dollars, the principal thereof, when the same becomes due and payable at the time mentioned in said bonds and mortgages, the court may, upon petition of the complainants, or the holders of the said bonds, by a further order founded upon this decree, direct a sale of said mortgaged premises, or any part thereof, or of such part thereof as may not be previously sold under this decree, to be made under and in conformity to this decree as aforesaid, for the amount then so due, with the costs of such petition, and the subsequent proceedings theron, and the same proceedings shall be had as often as a default shall be made.

A. G. MILLER.

Decree signed, recorded, and enrolled, January 13, A. D. 1862.

J. M. MILLER, *Clerk.*

1225 *Report of sale of the western division.*

In the district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPERD KNAPP, trustees, complainant,

vs.

LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Santhoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Ed-

ward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick
1226 Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman and John Nicholson, defendants.

In chancery.

I, Darius C. Jackson, marshal for the district of Wisconsin, hereby report that, in pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, as directed in said decree, I gave notice of the time and place of sale by publication once in each week for three months, in the La Crosse Republican, a newspaper published in the city of La Crosse, and in the Evening Post, a newspaper published in the city of New York, (a printed copy of said notices and the affidavits of publication are hereto annexed and referred to as a part of this report,) and I did at the time and place mentioned in said printed notice, to wit, on the 25th day of April, in the year 1863, at two o'clock, at the post office in the city of Milwaukee, then and there first offer for sale and sell at public auction, the premises described in said decree as follows, to wit:

"All and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of an act of Congress of the United States, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, A. D. 1856, and under or by virtue of an act of the legislature of the State of Wisconsin, approved October 11, A. D. 1856, entitled 'An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, A. D. 1857, so far as the said lands pertain or are applicable to the construction of said road from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of lands, together with all the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, situate, lying and being in the State of Wisconsin, which were bid off by William Wallace Pratt and William H. White, for the sum of one hundred and twenty-five thousand dollars, ($125,000,) they being the highest and best bidder, and that being the highest and best bid made for the premises described.

1227 And I there offered for sale and sold in like manner the

balance of the premises and property described in said decree, as follows, to wit: "All and singular the several tracts, pieces, or parcels of land which constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships 25 and 31, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have been procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been procured for or used in connexion with said roads, or either of them, and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description relating to said roads, (of said rolling stock forty box-cars, numbered, respectively, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 292, 394, 396, 398, 400, 402, 404, 406, and 408, and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road covered by the aforesaid mortgage bear to the balance or other end of said road, was sold free and clear of all lien incumbrance; but the remainder of the above-mentioned rolling stock was sold subject to the lien of mortgages prior in date to the mortgage above mentioned, given by said La Crosse and Milwaukee Railroad Company,) together with the tools, rents, and income to be had or levied therefrom, and all corporate and other rights, franchises, and privileges of the said company of, in, and to, or concerning the same, being all the property, real or personal, described in the said mortgage, (except the lands therein mentioned, granted by Congress to the State of Wisconsin;) and all and singular the privileges, hereditaments, appurtenances to the same, belonging, or in anywise appertaining, situate, lying, and being in the State
1228 of Wisconsin, which was bid off by William Wallace Pratt and William H. White for the sum of two million six hundred and seventy-five thousand dollars, ($2,675,000,) they being the highest and best bidders, and that being the highest and best bid made for the premises last above described.

And I further report that said purchasers have complied with both of their said bids, and have paid to me the sum of two million eight hundred thousand dollars, as follows:

Said sum is $1.001.932 on each dollar of the principal of the bonds secured by the said mortgage, as fixed by the decree in this cause, said purchasers have paid twenty-seven hundred and eight thousand six hundred and twenty-three 8-100 dollars ($2,708,623 08) in bonds secured by said mortgages, as follows: nineteen hundred and thirty-

nine (1,939) of said bonds, numbered between 1 and 1991, inclusive, for one thousand dollars each; eighteen hundred and sixty-five (1,865) of said bonds for one thousand dollars each, numbered between 1992 and 3950, inclusive, and ninety-two bonds for five hundred dollars each, numbered between 1 and 100, inclusive, and ninety-one thousand three hundred and seventy-six dollars and twenty-two cents, ($91,396 22,) in cash, all of which amounts to $1.000.932 on the dollar of principal of all the bonds outstanding and secured said mortgage.

DARIUS C. JACKSON, *U. S. Marshal.*
By WILLIAM J. JACKSON, *Deputy.*

Filed April 27, 1863.

1229 *Order of June* 12, 1863, *in western division foreclosure cause.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863, present the honorable Andrew G. Miller, judge of said court, presiding.

On the eighteenth day of the said term, to wit, on the twelfth day of June, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, *et als.*
} In equity.

On consideration of the said petition of the Milwaukee & St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee & St.

1230 Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road-bed and track, with its depots, station houses, engine-houses, and all other property belonging to said railroad between the said points, and the forty box-cars mentioned and described in the decree.

And also the share or proportion of the rolling stock and personal property purchased by the receiver as mentioned in the decree. And also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court. And it is further ordered by the court, that the said receiver be and hereby is discharged as such from the management and control of the said western division of said railroad under the appointment in this case, subject however to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed.

1231 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I

have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file, and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this third day of July, in the year of our Lord one thousand eight hundred and sixty-three, and
[L. S.] of the independence of the said United States the eighty-seventh.

J. M. MILLER, *Clerk.*

1232 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863, present the honorable Andrew G. Miller, judge of said court, presiding.

On the eighteenth day of said term, to wit, on the twelfth day of June, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON AND JAMES T. SOUTTER,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others. } In equity.

June 12th, 1863.—A petition in writing of the Milwaukee and St Paul Railway Company having been presented to the court and filed in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, against the La Crosse and Milwaukee Railroad Co., and others, setting forth in substance that, in pursuance of a decree of this court in that case, the western division of the La Crosse
1233 and Milwaukee railroad, between La Crosse and Portage City, has been sold, and that said sale was confirmed and perfected. And that said Milwaukee and St. Paul Railway Co. is a corporation organized under the laws of the State, as granted under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Co.

And the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse and Milwaukee Railroad Co., who is prosecuting a judgment creditors' bill, and of the Milwaukee and Minnesota Co., in opposition thereto. And the court being satisfied that the policy of the State and the interests of the public and of the creditors of the La Crosse and Milwaukee Railroad Co. require that the court should not continue further to operate by its receiver any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a

responsible corporation. And the court being satisfied that its possession and control by a receiver of the eastern division, between Portage City and Milwaukee might affect the rights of the public, and embarrass the free and proper operation of the whole road as required by the original grant of charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Co. And it being represented to the court that persons interested in the Milwaukee and St. Paul Railroad Co. own or control bonds included in the mortgage to these complainants, and the subject of this suit to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage.

It is thereupon ordered by the court that the order appointing a receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering or modifying this order now here made: That the receiver let the said Milwaukee & St. Paul Railway Co. into the possession of the eastern division of the La Crosse & Milwaukee railroad from Portage City to Milwaukee with the appurtenances and property and rolling stock thereto belonging; and that the said Milwaukee and St. Paul Railway Co., subject to the further order or orders of the said court, operate said eastern division of said railroad in connexion with the said western division
1234 thereof, so that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Co., without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company in pursuance of said charter, and not otherwise.

And it is further ordered by the court that the said Milwaukee and St. Paul Railway Co. shall at all times allow and permit the receiver or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its board of directors, in relation to the business and operation of the whole line of road, and that the said Railway Co. shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad; and that the said receiver make monthly returns as heretofore of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Co. according to their priorities and equities.

And it is further ordered by the court, that before the said Milwaukee and St. Paul Railway Co. be permitted to have possession under this order, the said company, by its constituted officers shall enter into bond to the United States for the use and benefit of all in-

terested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse & Milwaukee Railroad Co., and shall make monthly returns, and pay over the net revenues of said road, according to this order.

1235 UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this third day of July, in the year of our Lord one thousnd eight hundred and sixty-three, and of the independence of the said United States the eighty-seventh.

[L. S.] J. M. MILLER, *Clerk.*

1236 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863, present, the honorable Andrew G. Miller, judge of said court, presiding.

On the fourteenth day of the said term, to wit, on the seventh day of May, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER AND SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, *et als.*
} In equity.

This day came Mr. Cary on behalf of the Milwaukee and St. Paul Railway Company, and presented to the court its petition in writing as herein filed.

1237 Whereupon, it is ordered by the court, (Mr. Carpenter in behalf of the Milwaukee and Minnesota Railroad Company, and Mr. Ryan in behalf of William Crawshay and Orville Oddie, objecting,) that the receiver deliver over to the said Milwaukee and St. Paul Railway Company the said railroad and appurtenances, between Portage City and La Crosse, and the rolling stock and property specially described in the decree.

And it is further ordered by the court, that a full and perfect inventory be taken by the receiver of all rolling stock other than the forty box-cars specially mentioned in the decree, and of all personal property belonging to the said La Crosse and Milwaukee Railroad Company, including such as have been pro-

cured by the receiver, and now on hand, and that he make report of the same on the eighth day of June next.

And as, in pursuance of the act incorporating the La Crosse and Milwaukee Railroad Company, a continuous road has been constructed and operated between La Crosse and Milwaukee, and the interest of the public requiring that the said road, as constructed and operated, shall continue to be so operated, it is ordered by the court (reserving the right to rescind, change or modify this order at any time hereafter) that the said Milwaukee and St. Paul Railway Company and the receiver who continues to be the receiver of the east-
1238 ern end or division of said La Crosse and Milwaukee railroad, between Milwaukee and Portage City, jointly operate said road between La Crosse and Milwaukee without interruption, and that the said Milwaukee and St. Paul Railway Company, and the said receiver, jointly, employ all the agents and persons necessary for the proper operating of said road; that the revenues of said road be paid to the receiver as heretofore, who shall keep all accounts and books for the inspection of the said company, and said company make, keep, duplicate books, and that all payments and disbursements for necessary expenses in operating said road, shall be paid out of the joint fund, each division of said road to be entitled to its proportion of revenue, and to be charged with its proportion of disbursements, and that the said receiver pay coupons of bonds in prior mortgages as heretofore.

1239 UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, John M. Miller, clerk of the District Court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file, and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this seventh day of July, in the year of our Lord one thousand eight hundred and sixty three, and of the independence of the said United States the eighty-eighth.

[L. S] J. M. MILLER, *Clerk.*

1240 And afterwards on the 21st day of July, 1863, came the parties by their counsel. And the motion of William Crawshay and Orville Oddie having been argued by counsel, it is ordered by this court that the said motion be, and hereby is, overruled for want of jurisdiction. July 25, 1863. Receiver's report for June, 1863, filed. August 21, 1863. Receiver's report for July, 1863, filed.

And afterwards, on the 26th day of September, 1864, came Alexander Fleming, one of the bondholders, by his counsel, and filed his petition for an order that the marshal make report of sale in this cause, to this court, together with notice, as follows:

1241 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER AND SHEPHERD KNAPP, survivors, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others. } In equity.

To the judges of the circuit court of the United States for the ninth circuit and district of Wisconsin.—In equity.

Your petitioner, Alexander Fleming, a citizen of the State of New York,

respectfully represents that he is the equitable owner of bonds numbered, respectively, 2020, 2021, 2022, 2023, 2024, 2169, 2314, 2315, 2441, 2442, 2443, 2444 and 2445, secured by the mortgage executed by the La Crosse and Milwaukee Railroad Company to James T. Soutter, Greene C. Bronson and Shepherd Knapp, trustees, mentioned and described in the bill of complaint of the complainants in this cause; and to foreclose which the said bill was exhibited in the district court of the United States for the district of Wisconsin, in equity; that a decree of foreclosure and sale was rendered in this cause by the said district court on the 13th day of January, A. D. 1862, and that under said decree the marshal of said district advertised the mortgaged premises for sale, under some form of notice, and pretended to sell the same, together
1242 with other property not directed to be sold by said decree, on the 25th day of April, A. D. 1863; that the said marshal had previously pretended to sell said mortgaged premises, and said other property, on the 4th day of October, A. D. 1862, and that said marshal reported the same to this court; and that this court set aside said sale of October 4, 1862, and ordered on the —— day of ————, A. D. 186–, that the marshal proceed to re-sell the mortgaged premises under said decree; and that the sale by said marshal, made as aforesaid on the 25th day of April, A. D. 1863, was pretended to be made in pursuance of said order of this court under said decree.

Your petitioner further shows that the said marshal has never made report to this court of his said sale of April 25, 1863, and that the same has never been confirmed by this court; but that said sale remains unconfirmed and incomplete, as your petitioner is advised, for want of such confirmation of sale by this court; that the said marshal did pretend to report said sale to the district court of said district, and that said district court pretended to confirm the same on the 5th day of May, A. D. 1863; but your petitioner is advised, and submits that the said district court never had any authority or jurisdiction over this cause after the 15th day of July, A. D. 1862, after the passage of the act of Con-
1243 gress, which became a law on that day, repealing all the civil jurisdiction of said district court and establishing this court; and that the said report of sale and confirmation thereof to and by said district court were and are irregular and absolutely void.

Your petitioner further shows that, as he is informed and believes, and as appears of record in this cause, the said complainants or their solicitors have never made application to this court to compel the said marshal to make report of said sale of April 25, 1863, to this court, and do not intend so to do; that on the contrary thereof, under color of the said unauthorized confirmation of said sale by the said district court, the Milwaukee and St. Paul Railway Company is now in possession of the mortgaged premises and operating the same, pretending to be owners thereof; and that the solicitor of said complainants pretends in this cause, and gives out in arguments in this court, that the trust cast upon said complainants under and by virtue of said mortgage is fully performed, and that said complainants are no longer subject to the orders of this court in said cause.

Your petitioner further shows to your honors, upon information and belief, that on or about the 25th day of October, 1861, one Henry E. Weed, who was then the owner and holder of said thirteen bonds, deposited the same with Isaac Seymour, Horace Galpin, Benjamin F. Dawson, Francis Vose, Frederick P. James, William Gould, and D. M. Hughes, as trustees, under and in pursuance
1244 of a certain plan or arrangement made and entered into by and between certain creditors of the La Crosse and Milwaukee railroad company, a copy of which is hereto attached and marked Exhibit No. 1; and that the said trustees issued to said Weed a certificate, evidencing said deposit of said thirteen bonds, a copy of which certificate is hereto attached and marked Exhibit No. 2; and both of said exhibits are made part of this petition.

That about one year since your petitioner became the owner equitably of said thirteen bonds by purchase from said Weed, and ever since has been and now is the owner thereof.

Your petitioner further represents that the said trustees, under and by virtue of said trust, were only authorized to use the same in the manner and for the purpose therein set forth, and never had the same, or any authority over the same, except as set forth in said document, copy of which is (Exhibit No. 1) hereto attached, as your petitioner is informed and believes.

Your petitioner further represents that said trustees have not, nor has either of them or any of them, used said bonds according to the true intent, meaning, or tenor of said declaration of trust, but have, on the contrary, as your petitioner is informed and believes, totally abandoned said trust, and now hold said
1245 bonds wrongfully, as against the true owners thereof; or have deposited the same in the said district court in pretended payment of the bid of William White and William W. Pratt, as hereinafter stated.

Your petitioner further shows that said White and said Pratt were declared the purchasers at said sale of the 25th day of April, A. D. 1863, and that they have never paid the sum bid by them therefor, as your petitioner is advised, informed, and believes, and that said thirteen bonds have never been paid; and that your petitioner is entitled, in default of the action of the complainants and their solicitor in that behalf, to move in said court in the behalf of his bonds, and on behalf of all other owners of bonds thus situated.

Your petitioner therefore humbly prays your honors to lay a rule upon the said marshal of said district, commanding him forthwith to report to the said circuit court the said sale made or pretended by him to have been made on the 25th day of April, A. D., 1863, to the end that the same may be confirmed by order of this court, and the said purchasers be compelled to perform their said purchase and pay the amount bid by them into said circuit court in cash, or that said sale may be set aside and a new sale be ordered under said decree.

A. FLEMING,
By MATH. H. CARPENTER,
His Solicitor.

1246 DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says, that he has heard read the foregoing petition and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters and things therein stated on his information and belief; and that as to those matters he believes it to be true,

A. FLEMING.

Subscribed and sworn to before me, this 26th day of September, A. D. 1864.
JAMES McFARLIN,
Commissioner Circuit Court U. S., Dis't of Wis.

1247 EXHIBIT No. 1.

Agreement between the assenting creditors of the La Crosse and Milwaukee Railroad Company for the purchase of said road and the organizing a new corporation for the benefit of the purchasers, made October 3, 1861.

Whereas the subscribers to a plan for a proposed basis for reorganizing the La Crosse and Milwaukee Railroad Company, dated September 3, 1861, at a meeting regularly called and held October 1, 1861, duly elected the undersigned, Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis Vose, Fred. P. James, William Gould, and D. M. Hughes, trustees and attorneys of the parties assenting to said plan or basis.

And whereas the said parties at said meeting unanimously passed a resolution in the following words, viz:

"*Resolved*, That the trustees, or a majority of them, elected to carry into

effect the plan of purchasing the La Crosse railroad and of organizing a new corporation of the purchasers, with such modifications as they deem for our interest, are hereby authorized to purchase the whole or any part of the real or personal property of said railroad company, at any foreclosure or other sale that may be made of it, and to organize a new corporation with the usual powers and privileges of similar corporations, and to convey the premises so purchased to said new company; also to do any and all things pertaining to this matter, except to obligate us personally for the payment of money, which a majority of them deem for our benefit, as fully as we might do if personally present; and they may add to their number or fill any vacancies which may occur."

1248 Now, therefore, in pursuance of the authority so conferred upon us, we do hereby declare and adopt this instrument as and for an agreement by and between the said creditors of the said La Crosse and Milwaukee Railroad Company, and all certificates, receipts, or other evidences given by us in exchange for bonds or other claims against said road are to be held subject to the provisions herein contained. And this agreement shall not be altered or modified except as provided in the 14th article hereof.

First. That said trustees, or a majority of them, are authorized to purchase the whole or any part of the real or personal estate of the said railroad company, and to convey the same to a new company to be formed for the benefit of the assenting bondholders and claimants, entitled to participate in the benefits of this agreement. Such sale and purchase to be made subject to all the liens, rights, and claims of the holders of any prior mortgage, and the said railroad and corporate property so purchased shall be held subject to the conditions and agreements herein contained and declared, and in trust for the benefit of the assentents hereto. The said trustees or attorneys shall have power to advise with the trustees prosecuting the suits of foreclosure, and to give full direction from time to time in regard to said suits, or any other which may be brought affecting in any manner the rights or interests of the assentents, and generally to do any and all things which they deem for the benefit of the assentents, as fully as they might do if personally present.

1249 But this power is limited so that neither the said trustees or attorneys, nor their successors in the trust, nor any person under them, shall have power or authority to do any act or thing whereby any assentent shall become liable to pay any money unless he shall hereafter give his written assent. Nor shall they have power to sell, hypothecate, or in any manner encumber the bonds, coupons, or other evidences of debt, which may come into their possession, or in any manner be under their control by virtue of this agreement.

Second. That said trustees, or a majority of them, shall, whenever in their judgment it will best promote the interest of said bondholders and claimants, organize a new corporation, on the following terms, limitations and conditions, viz:

1st. That the name of the new corporation shall be "The Milwaukie and St. Paul Railroad Company," of which there shall be nine directors, of whom one-third shall be bondholders, one-third preferred stockholders, and one-third common stockholders.

2d. That the said company shall have no power to create any debts, except a new first mortgage not exceeding $4,200,000 in amount, including the amount of outstanding first mortgage bonds on the eastern division, at the time of organizing the new company, estimated at that time to be about $886,000, and the Milwaukee city bonds, secured by mortgage on the same property, amounting to $314,000, unless the assent in writing of two-thirds of the bondholders, and also two thirds of the preferred stockholders shall be first had and

1250 obtained, authorizing the same; but this prohibition shall not apply to the assuming of any prior mortgage debts or liens which the road or property of the old company shall be encumbered by at the time of the purchase.

3d. That the preferred stock shall not exceed $2,000,000, exclusive of a suf-

ficient sum to provide for the conversion of the said new first mortgage bonds, and in all shall not exceed $6,200,000. That it shall be entitled to a dividend of seven per cent. per annum from the net earnings of each current year, after payment of interest on all the mortgage bonds, if the company earn so much during the current year, and before any payment of dividends to any other class of stockholders; if the net earnings of the company are not so much in any one year then the said preferred stock shall receive for that year a dividend of whatever the said net earnings are, after payment of interest on the mortgage bonds; and said preferred stock shall not have any claim upon the earnings of any other year for the non-payment of dividends of a preceding year.

4th. That the common stock to be issued shall not exceed the sum of $2,000,000, and until the company's net earnings are sufficient to pay interest on all their mortgages and a full dividend on their preferred stock, the said common stockholders shall not be entitled to vote upon their stock.

5th. That the mortgage deed of trust given to secure the bonds of the new company, and to be received by the assentents, shall be well and faithfully
1251 drafted and executed, so as to give them all the security for the payment of their bonds, principal and interest, that counsel learned in the law shall advise to be reasonable and proper for their security and protection. And it shall be a first and only mortgage on the whole road, franchises and equipments, property, real and personal, of the company, and shall be made to secure the payment of $4,200,000 in bonds, bearing interest at seven per cent. per annum, principal and interest payable in the city of New York, interest semi-annually, and the principal payable thirty years from the date of the mortgage.

The mortgage shall also contain a provision for a sinking fund for the payment of said mortgage bonds, by which the new company shall obligate themselves to pay to the trustees of said mortgage bonds all such sums of money as shall be derived from the sale of any lands which may have been or shall hereafter be donated or granted by either the United States or the State of Wisconsin to aid in building this road, or that shall in any manner be acquired by said trustees, under this agreement or by the new company, by reason of the foreclosure and sale of any lands heretofore mortgaged to secure the payment of any bonds held by parties assenting hereto. And said lands shall be fairly and equitably valued and classified by the trustees under this agreement, or by such persons as they shall appoint; and upon sale of said lands, said mortgage bonds may be received at par, and accrued interest in pay-
1252 ment therefor, and the bonds thus received in payment shall be immediately cancelled by cutting out the signatures thereto. And said trust deed shall contain all other reasonable and proper provisions for making said lands the most productive and available to the company as a sinking fund for the payment of said bonds.

The trustees of said mortgage shall, immediately after any payment is made them, designate by lot so many of the bonds as they have money to pay, to which the sum received by them shall be applied in payment. They shall give notice of the numbers of the bonds designated in two or more of the newspapers printed in the city of New York, and after the first day of the succeeding January or July in each year, the interest on the bonds so designated shall cease, and neither the company or their successors shall be any longer liable for the payment of the interest or principal thereof. Said trustees shall, on the first day of each January and July, pay the principal and interest of said bonds and cancel and surrender the same to the company, and also the scrip certificate of stock accompanying said bonds.

The bonds thus to be issued and secured may have as a condition that in case of default of interest for six months, then the principal shall become due without demand or notice.

The bonds secured by said mortgage shall be convertible at the option of

the holder into the preferred stock, at any time within ten days after
1253 any dividend shall have been declared, and become payable on said preferred stock.

It shall be further provided, if the bondholders so elect that the company shall issue, at the time of the delivery of each bond, ten shares of scrip stock, in the preferred stock, for each $1,000 bond, and five shares for each $500 bond, the certificate of which shall be so framed as to accompany each bond, which stock may be voted upon at all stockholders' meetings, but shall not be entitled to receive any dividends until the bond represented therein shall be surrendered and cancelled, and the surrender of the bond shall be considered the payment for the stock. And should any further legislation be required to authorize the bondholders to vote in this or some other suitable manner, the trustees under this agreement, or the new company, as the case may be, shall apply to the legislature of Wisconsin in good faith to get the necessary authority. The said trust deed shall also contain a provision requiring so many of said $4,200,000 of bonds as are reserved for the first mortgage eastern division, to be cancelled from time to time as the present sinking fund ($12,000 per annum) on said first mortgage eastern division bonds, $886,000, shall have cancelled of that mortgage.

Third. Such of the assentents to said basis as surrender to said
1254 trustees, upon their request, the bonds of said railroad company known as second mortgage eastern division bonds, dated September 1, 1857, and maturing September 1, 1870, shall receive the new mortgage bonds of said new company at par, for eighty per cent. of the principal of said bonds, and the said preferred stock for the remaining twenty per cent. of principal, and they shall remit in favor of said new company all interest accrued upon said bonds thus surrendered.

Fourth. Such of the assentents as surrender to said trustees, upon their request, the bonds of said railroad company known as first issue land grants of $1,000 each, and numbered from 1 to 1991, inclusive, shall receive the new mortgage bonds of the new company at par for the principal of their bonds, and for accrued interest, twenty-five per cent. upon the principal in said preferred stock—a proportional reduction to be made for overdue coupons not surrendered.

Fifth. Such of the assentents as surrender to said trustees, upon their request, the bonds of said railroad company known as medium issue land grants of $1,000 each, and numbered from 1992 to 2500, inclusive, shall receive the mortgage bond of the new company at 40 per cent. of the principal, and the said preferred stock for 25 per cent. of the principal, the balance of principal and interest they shall remit in favor of said new company.

Sixth. Such of the assentents as surrender to said trustees, upon their
1255 request, the bonds of said railroad company, known as the Helfenstein mortgage, shall receive for said bonds 40 per cent. in said preferred stock, and the balance of the principal and interest they shall remit in favor of said new company.

Seventh. Such of the assentents as surrender to said trustees, upon their request, bonds of said railroad company, known as second issue land grants, the $1,000 bonds numbered from 2501 to 3950, inclusive, and the $500 bonds numbered from 1 to 100, inclusive, shall receive 40 per cent. of the principal in said preferred stock, and 40 per cent. of the principal in said common stock, and the balance of principal and interest they shall remit in favor of the new company.

Eighth. The farm mortgage stockholders of said railroad company may receive 80 per cent. of the full amount of their old stock in the common stock of the new company.

Ninth. The stockholders of the Milwaukee and Minnesota Railroad Company, except the farm mortgage stockholders of the La Crosse Company, who are provided for in the eleventh article hereof, if they transfer and surrender their stock, upon request of said trustees, to them, shall receive twenty per cent.

of their Milwaukee and Minnesota railroad stock in the common stock of the new company at par.

Tenth. It is expressly understood and agreed by all the parties in inter-
1256 est that said trustees shall have the power to audit, reject, or allow, either in whole or in part, any bonds or claims assented hereto before the issuing of any certificate therefore.

Eleventh. No party shall be considered as having any claim upon the said trustees, or to the benefits of this agreement, unless he or they shall surrender or assign to said trustees the bonds or claims held by said party against said railroad company, with all the unpaid coupons attached, previous to the sale of said road, or any part thereof, or whenever the trustees shall require the same by notice duly advertised or by circular, for which they shall receive, in the first instance, a trustees certificate or receipt therefore, payable to bearer and negotiable from hand to hand without indorsement; and, whenever he or they shall be requested, they shall surrender said certificate or receipt, and in lieu thereof, and in full satisfaction therefor, shall receive the mortgage bonds of the new company, and the different classes of stock of the same, both at the par value thereof, as herein provided.

Twelfth. The trustees and attorneys appointed under this agreement shall not exceed seven in all, and they may resign their trust and position at any time, and in case of any resignation or vacancy, caused by death, removal, or other inability or incapacity to act, the survivors may fill the vacancy. The said trustees or attorneys shall keep a true record of all their acts and doings under this agreement.

1257 Thirteenth. It is agreed by all the assentents that in carrying out any of the provisions of this agreement said trustees or attorneys are hereby authorized in relation to all matters, exigencies, and things not herein specially provided for, to exercise a liberal discretion in the premises, and, further, that a majority of said trustees or attorneys shall have power to act in all cases under this agreement.

Fourteenth. It is further agreed that, upon the written recommendation of six of the seven trustees herein named, and placed before any regular or special meeting of the assentents, duly called, at which a majority in interest (as the same may then be) of each class of mortgage bondholders or their assigns assenting hereto, shall be present, and voting in the affirmative, it shall be competent for said meeting to alter or modify this agreement, or any part thereof, and thereafter this agreement shall have the same effect in law and equity as if said alterations or modifications had been duly incorporated herein, but no assenter hereto, or his legal representative, shall become liable to pay any money (except at his option) by any such action unless he shall have voted therefor or assented thereto. At said meeting, and at all other meetings of the assentents hereto, each mortgage bondholder, having surrendered his bonds to the trustees herein named, shall be entitled to one vote for each $1,000 of the principal of the bonds surrendered.

1258 Fifteenth. Annual meetings of the assentents hereto shall be held in the city of New York, in the month of October in each year, which meeting shall be called by said trustees or attorneys, who shall specify the time and place for holding the same; and at such meeting, or at any special meeting duly called, they shall submit a full and specific statement of all their acts and proceedings under this agreement.

Sixteenth. It is agreed by all the assentents that the time within which mortgage bondholders and others can become parties to this agreement shall be limited to and include the first day of November, 1861, but this limitation may be extended by the trustees or attorneys elected hereunder, if they deem it for the interest of the assentents so to do.

Notice shall be given, by advertisement or otherwise, of the general object of this agreement, and the time within which bondholders can become parties hereto, to the end that all parties interested in the road may have a reasonable opportunity to assent hereto, and secure to themselves the benefits hereof.

ISAAC SEYMOUR,
HORACE GALPIN,
BENJAMIN F. DAWSON,
FRANCIS VOSE,
FRED. P. JAMES,
WILLIAM GOULD,
D. M. HUGHES.

1259 *Recapitulation.*

A second mortgage, eastern division, bondholder gets first mortgage bonds for 80 per cent., preferred stock for 20 per cent.; in all, 100 per cent.

A land grant bondholder, low numbers (1 *a* 1991) gets new 1st mortgage bonds at par, and for interest $250 preferred stock.

A medium No. land grant bondholder (Nos. 1992 *a* 2500) gets new 1st mortgage bonds for 40 per cent. of the principal and $250 in preferred stock; in all, 65 per cent.

A high No. land grant bondholder (2501 *a* 3950 of the $1,000 bonds and No. 1 *a* 100 of the $500 bonds) gets 40 per cent. in preferred stock and 40 per cent. in common stock; in all, 80 per cent.

The office of the trustees is at 29 William street, city of New York, (room 4,) where they are prepared to receive the surrender of the bonds and attend to the duties of their trust.

N. A. COWDREY, *Secretary.*

EXHIBIT No. 2.

No. 18. For medium issue (1992 *a* 2500) land grant, first mortgage bonds, issued pursuant to a plan dated September 3d, 1861, and to an agreement dated October 3d, 1861, for the purchase of the La Crosse and Milwaukee Rail-
1260 road, &c., and for the protection of the interest of certain assenting creditors, Isaac Seymour, Horace Galpen, Benjamin F. Dawson, Francis Vose, Frederick P. James, William Gould, and D. M. Hughes, trustees, do hereby certify that, pursuant to said plan and agreement for purchasing the La Crosse and Milwaukee Railroad, and the real and personal property of that company, Henry E. Weed has deposited with said trustees thirteen (13) bonds of said company, known as the medium issue land grant first mortgage bonds, dated February 1st, 1857, and maturing February 1st, 1877, amounting to thirteen thousand ($13,000) dollars of principal, with unpaid coupons attached from February 1st, 1858, Nos. 2020, 2021, 2022, 2023, 2024, 2169, 2314, 2315, 2441, 2442, 2443, 2444, 2445; which bonds are to be used by said trustees in the purchase of said road, or any part thereof, at their discretion; and so much thereof as is not cancelled by said sale and purchase is to become the property of the company to be formed from or by the purchasers of said road, under the said agreement, whenever the new company are prepared to issue and deliver new bonds and stock, as set forth in said agreement.

This certificate, and the interest herein expressed, is issued and is to be held and used subject to the plan proposed in said basis of reorganization; and said agreement and thereunder entitles the said Weed or bearer, upon its pre-
1261 sentation and surrender, to a new mortgage bond of said new company for 40 per cent. of the bonds above surrendered, and to two and a half shares of preferred stock of $100 each, in said company, for each $1,000 bond.

Representing amount in new bond	$5,200
Do.....do...preferred stock, $32\frac{50}{100}$ shs	3,250
Total	8,450

October 25, 1861.

I. SEYMOUR, *Chairman.*

N. A. COWDREY, *Secretary.*

(Filed Sept. 26, 1864.)

1262 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors, &c., trustees, complainants,
vs.
The LA CROSSE and MILWAUKEE RAILROAD COMPANY and others, defendants.
} In equity.

To Messrs. Cary & Pratt, solicitors for complainants:
To Darius C. Jackson, marshal of said district:
To William White and William W. Pratt, bidders at sale under decree in this cause:
To the Milwaukee and St. Paul Railway Company, pretended owner of the mortgaged premises decreed to be sold in this cause:

Take notice, that Alexander Fleming has filed in court in the above-entitled cause in said court a petition this day, praying the judges of said court to lay a rule upon the marshal of said district to report to the said court the pretended sale made by him under the decree in this cause, on the 25th day of April, 1863, that the same may be confirmed by said court, and the said purchasers be required to pay into court the amounts of their bid; or that the same may be set aside and a new sale ordered, as may be agreeable to equity and good
1263 conscience; and please take notice that on the opening of the said court on the morning of Wednesday, the 28th day of September, A. D. 1864, or as soon thereafter as counsel can be heard, the said petition will be formally presented to said court, and the said court be moved thereon, according to the prayer of the same.

Dated September 26, 1864.

MATT. H. CARPENTER,
Solicitor for A. Fleming, petitioner.

Indorsed thereon: We admit service of a copy of this notice on us this 26th day of September, A. D. 1864.

CARY & PRATT,
Sol. for complts. and for W. W. Pratt.
D. C. JACKSON, *U. S. Marshal.*
MIL. AND ST. P. RY. CO.,
By RUSSELL SAGE, *Prest.*

Filed Sept. 26, 1864.

September 27, 1864: This day came Lawrence G. Graham and Donald Scott, by their counsel, and filed their petition for leave to become parties to this cause and to bring an appeal from the decree herein to the Supreme Court of the United States, with notice, &c., as follows:

1264 Circuit court United States, 9 circuit and district of Wisconsin.

JAMES T. SOUTTER AND SHEPHERD KNAPP, survivors, &c.,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, &c., and others.
} In equity.

To the judges of the circuit court of the United States for the 9th circuit and district of Wisconsin.—In equity.

Your petitioners, Lawrence G. Graham and Donald D. Scott, aliens, subjects of her Majesty the Queen of Great Britain and Ireland, respectfully represent:

That the bill of complaint in this cause was exhibited by the complainants to foreclose a certain mortgage executed to them by the La Crosse and Milwaukee Railroad Company, particularly described in the said bill of complaint.

That your petitioners were made parties defendant thereto to foreclose and bar them of the lien or supposed lien of a certain judgment in their favor against the said railroad company.

That the said J. Albert Helfenstein, trustee, &c., was made a party defendant in this cause to bar and foreclose the lien of a certain mortgage
1265 executed by said railroad company to said Helfenstein as trustee subsequent in date and priority to the said mortgage to the said complainants.

That your petitioners, when said suit was brought, were the owners of eighty thousand dollars of the bonds secured by and described in the mortgage to said Helfenstein, and your petitioners relied upon the said Helfenstein to protect the rights and interests of your petitioners as holders of said bonds; and believing that said mortgaged premises were not an adequate security for the mortgage liens thereon, which mortgages were prior in date to your petitioners' judgment, your petitioners made no defence to said bill of complaint, and permitted the same to be taken as confessed as against them.

Your petitioners further show, on information and belief, that the said Henfenstein did make answer to said bill of complaint, and therein did properly set forth and show to the court that the said mortgage to him was subsequent in date to that given to the complainants; yet that said mortgage to said Helfenstein was a lien upon said mortgage premises described in said mortgage to said complainants, prior to all the bonds described in and secured by the mortgage to complainants, except the bonds thereby secured and numbered from 1 to 1991, inclusive, said Helfenstein mortgage having been made and issued by said company subsequent only to the issue of said bonds numbered from 1
1266 to 1991, inclusive.

Your petitioners further show, that by the final decree in this cause the said Helfenstein mortgage was postponed, in priority of lien, to the whole amount of bonds secured by the said complainant's mortgage; and that the sum for which the mortgage premises in this cause were sold was not equal to the amounts secured by the mortgage to the complainants; therefore the bonds secured by the said Helfenstein mortgage are rendered worthless.

Your petitioners further show, that, had the said Helfenstein mortgage been declared by said decree to be a lien upon said mortgage premises in the order claimed by the answer of the said Helfenstein, the sum for which said mortgage premises sold would have secured to the said Helfenstein mortgage bonds nearly the par value and amount thereof; and your petitioners would have received upon their said bonds a large amount, to wit, exceeding ten thousand dollars; so that your petitioners are greatly aggrieved by the said final decree in this cause.

Your petitioners further show, that the said Helfenstein, trustee, has taken and perfected no appeal from said final decree, although often requested so to

do by your petitioners; and your petitioners are informed and believe
1267 that the said Helfenstein does not intend to and will not perfect and prosecute an appeal from said decree.

Your petitioners further show, that they have repeatedly requested the said Helfenstein to take, perfect, and prosecute such appeal; that your petitioners have offered said Helfenstein fully to indemnify him from all cost, liability, and damage rusulting from said appeal, if he would take and prosecute the same; and have offered to employ counsel to prosecute said appeal, without charge to said Helfenstein, if he would consent to their substitution upon the record for that purpose; but the said Helfenstein pretends that the solicitor and counsel retained by him will not permit him to do so.

Your petitioners further show, that on the 17th day of September, 1864, they addressed to said Helfenstein a letter upon this subject, and received from him a reply thereto; and that a copy of said letter to said Helfenstein, and the said Helfenstein's reply thereto, are hereto attached, and marked respectively Exhibit No. 1 and Exhibit No. 2; that afterwards, on the 20th of September, 1864, your petitioners addressed and delivered to said Helfenstein a letter, a copy of which is hereto attached and marked Exhibit No. 3; but that, although your petitioner has repeatedly called upon said Helfenstein, and requested him
to reply to the same, or in some form render to your petitioners a state-
1268 ment of the sum demanded by him as condition precedent to taking and prosecuting said appeal, your petitioners have been unable to obtain from said Helfenstein any reply or statement as aforesaid.

Your petitioners therefore pray the aid of this honorable court in the premises, and that an order may be made in this cause permitting your petitioners to take, perfect, and prosecute an appeal in the name of said Helfenstein from said decree, first giving such bond and indemnity as this court may direct; or that your petitioners may have leave to file a supplemental bill in this cause making them parties defendant thereto, to the end that they may perfect an appeal from said decree, or that your petitioners may have such different or other or further relief as may be agreeable to equity; and they will ever pray, &c.

LAWRENCE G. GRAHAM.
DONALD D. SCOTT.
By MATT. H. CARPENTER,
Their Solicitor.

DISTRICT OF WISCONSIN, *ss:*

Lawrence G. Graham being first duly sworn on oath, says that he has heard read, and knows the contents of, the foregoing petition, and is one of the petitioners therein named, and that the same is true of his own knowledge,
1269 except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

LAWRENCE G. GRAHAM.

Subscribed and sworn to before me, this 27th day of September, A. D. 1864.
JAMES McFARLIN,
Commissioner United States Circuit Court, District of Wisconsin.

EXHIBIT No. 1.

Circuit court of the United States.

JAMES T. SOUTTER AND SHEPHERD KNAPP, Survivors of GREENE C. BRONSON, deceased, complainants,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, and others.
} Land grant foreclosure suit.

To J. ALBERT HELFENSTEIN, Esq.,
Trustee, &c., defendant in above entitled suit:

DEAR SIR: We are the owners of eighty thousand dollars of the bonds secured by the mortgage to you, and which was foreclosed of all lien by the decree in the above entitled cause. A long time has now elapsed, and no appeal has been taken by you from the said decree, by which, and by subsequent proceedings under the same, the said mortgage is extinguished as a lien, and the bonds secured thereby rendered worthless.

1270 We have always desired and often requested you to take an appeal, and to the end that we may protect our rights in the premises, we ask and desire you to answer immediately, in writing, whether or not you will take and prosecute an appeal from said decree.

If you will not, we desire to take the proper steps to protect our interests in the premises, by obtaining an appeal from said decree.

(Signed) LAWRENCE G. GRAHAM.
(Signed) DONALD D. SCOTT.

Milwaukee, *Sept.* 19, 1864.

EXHIBIT No. 2.

To Lawrence C. Graham and Donald D. Scott:

GENTS: In reply to your communication of 19th Sept., (of which the above is a copy,) I have to say: Soon after the commencement of this suit, yourselves, with others, bondholders, by my consent, employed Messrs. H. L. Palmer and A. R. R. Butler to act as counsel in this suit, and in the Dane county foreclosure, to protect the interests of the bondholders under the mortgage to me. Those gentlemen have acted as such counsel up to this time. I am informed that after the rendition of the final decree in this cause, and within the proper time, an appeal from said decree on my behalf, as a defendant

1271 in said cause, was prayed and allowed, and that the cause is now in such condition that such appeal may at time be perfected. I am informed by said counsel that they have made repeated efforts to induce the bondholders to take the necessary steps to perfect said appeal in the way of paying the necessary expenses, giving the necessary security, &c., attending such appeal, but that the bondholders have hitherto not caused such steps to be taken. I am informed that said counsel have unpaid charges for their services in this suit, under said employment, of $925, and that you have not contributed towards defraying the expense of their employment. I have also charges myself for my personal services and expenses as trustee.

I am ready to take all the steps necessary on my part to perfect said appeal, on being furnished by the bondholders with the necessary security for that purpose, and on being paid the sum due me for expenses attending the perfecting of such appeal, and the amount due to Messrs. Palmer and Butler. Messrs. Palmer and Butler inform me that they are willing to substitute as solicitors in their stead any counsel that the bondholders may desire, if they wish such substitution made. I am myself willing to assent to such substitution of other

1272 counsel. Messrs. Palmer and Butler also inform me that they are willing to accept the sum of $500 in full payment of the balance due them, in

case the same is paid at once, and they relieved from further connexion with and responsibility in the case; or they will go on in the case, on their bill being paid to this time, and on a satisfactory arrangement being made with them as to their fees in the future.

I am, with much respect, yours,

J. ALBERT HELFENSTEIN.

EXHIBIT No. 3.

Circuit court United States, district of Wisconsin.—In equity.

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors of GREENE C. BRONSON, deceased, compl'ts, *vs.* THE LA CROSSE and MILWAUKEE RAILROAD COMPANY, and others. } Land grant foreclosure suit.

To J. ALBERT HELFENSTEIN, Esq., *Trustee, &c., defendant in above-entitled suit:*

DEAR SIR: Your communication in reply to ours of the 19th inst. is received, in which we understand you to say that your fees and charges for services,
1273 &c., as well as the bill of Messrs. Palmer and Butler, must be paid before you will perfect and prosecute an appeal from the decree in this cause.

Will you be kind enough to reply immediately, in writing, what amount must be paid to you in addition to the bill of Messrs. Palmer and Butler, so that we may see whether it is in our power to comply.

Very resp't yours,

LAWRENCE G. GRAHAM.
DONALD D. SCOTT.

Dated, Milwaukee, Sept. 20, 1864.

(Filed September 27, 1864.)

1274 Circuit court of the United States, 9th circuit and district of Wisconsin.

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, and others. } In equity.

To Cary and Pratt, solicitors for complainants:

To H. L. Palmer and A. R. R. Butler, solicitors for J. Albert Helfenstein, trustee defendant:

Take notice, that Lawrence G. Graham and Donald D. Scott have filed a petition this day, in the above-entitled cause, for leave to prosecute an appeal from the final decree in this cause in the name of the said Helfenstein; and that said petition will be formally presented to said court, and heard on the opening of the said court at the court-room in Milwaukee on Thursday morning next, or as soon thereafter as counsel can be heard.

Yours truly,

MATT. H. CARPENTER,
Solicitor for said Graham and Scott.

DISTRICT OF WISCONSIN, *ss:*

Austin Gunnison, being first duly sworn, deposes and says that he served on the within-named H. L. Palmer, one of the solicitors for J. Albert Hel-
1275 fenstein, trustee, &c., a copy of the within notice, by handing the same

to him, personally, in his office in Milwaukee, and leaving the same with him this 27th day of September, A. D. 1864.

AUSTIN GUNNISON.

Subscribed and sworn to before me this 27th day of September, A. D. 1864.

Indorsed as follows: Service of the within admitted September 27, 1864.

CARY & PRATT,
Solicitors for Complainants.
A. R. R. BUTLER.

Filed September 27, 1864.

September 29, 1864. This day came the parties by their counsel, and on consideration of the motion of A. Fleming, that the marshal make report of sale in this cause to this court, it is ordered by the court that said motion be and the same is hereby overruled. And on the same day, on consideration of the petition of Lawrence G. Graham and Donald D. Scott, to be made parties, and have leave to bring an appeal to the Supreme Court, it is ordered by the court that said motion be and the same is hereby overruled.

And afterwards, on the 7th day of October, 1864, came the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and filed its petition for an order upon the marshal to make report of sale to this court, as follows, to wit:

1278 Circuit court of United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER & SHEPHERD KNAPP, survivors of GREENE C. BRONSON,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD and others.
} In equity.

To the judges of the circuit court of the United States for the district of Wisconsin.—In equity.

Your petitioner, the Milwaukee and Minnesota Railroad Company, a party defendant in this cause, comes here into court, by Matt. H. Carpenter, its solicitor, and, humbly petitioning, respectfully represents that it is the owner of the equity of redemption of the property and premises covered by and described in the mortgage to foreclose which this suit was commenced.

That after the final decree in this cause the marshal of the United States for this district conducted, or pretended to conduct, and consummate, a sale of said mortgaged premises under said decree at Milwaukee, in said district, on or about the 25th day of April, A. D. 1863.

That William Wallace Pratt and William H. White were, or pre-
1279 tend to have been, purchasers of said premises at said sale; but that the said marshal has never reported said sale to this court, nor has the said sale ever been either confirmed or set aside by order of this court.

That the said marshal pretended to report said sale to the district court of the United States for this district; and said district court made an order entitled in this cause, pretending to confirm said sale on or about the 5th day of May, 1863; but your petitioner is advised and submits that the said district court at that time had no jurisdiction whatever of this cause, and that this cause hath been ever since July 15, 1862, pending in this and in no other court.

Your petitioner therefore prays your honors that a rule may be made and passed by this court requiring the said marshal to report said sale forthwith to this court, according to the directions of decree in this cause in that behalf, or

that your petitioner may have such other and further relief as may be agreeable to equity, and your petitioner will ever pray.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY,
[L. S.]
1280 MATT. H. CARPENTER,
Solicitor for said Mil. and Min. R. R. Co.

DISTRICT OF WISCONSIN, *ss:*

Austin Gunnison, being first duly sworn, on oath says that he is one of the directors of said Milwaukee and Minnesota Railroad Company, which is a corporation existing under the laws of this State, and makes this verification on its behalf; and that he has heard read, and knows the contents of, the foregoing petition; and that the same is true to his own knowledge, and as appears of record in this cause.

AUSTIN GUNNISON.

Subscribed and sworn to before me this 7th day of October, 1864.

JAMES McFARLIN,
Commissioner Circuit Court U. S., Dist. of Wis.

Filed, Oct. 7, 1864.

And afterwards, on the 18th day of January, 1865, came the Milwaukee and Minnesota Railroad Company, and filed its petition for an appeal to the Supreme Court of the United States, with the allowance of the appeal indorsed thereon by the district judge, Dec. 31, 1864; and also an appeal bond, approved by the district judge at the same time, which petition and bond is as follows, to wit:

1281 Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER and SHEPHERD KNAPP, survivors of Greene C. Bronson,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendants.
} In equity.

Petition of Milwaukee and Minnesota Railroad Company for appeal.

To Hon. Andrew G. Miller, district judge of the United States for the district of Wisconsin, and judge of said circuit court:

Your petitioner, the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, humbly complaining, respectfully represents, that it is injured and aggrieved by the order of the district court in this cause made on the 5th day of May, A. D. 1863, confirming report of sale of mortgaged premises, and by the order of said district court in said cause on the 7th day of May, A. D. 1863, giving possession of mortgaged premises to the Milwaukee and St. Paul Railway Company; and the order of said district court in said cause on the 12th day of June, A. D. 1863, giving said Milwaukee and St. Paul Railway Company further possession, and also possession of other rolling stock, and by the whole of each and every of said orders; wherefore your petitioner prays an appeal to the Supreme Court of the United States from each
1282 and every of said orders, *wherefore your petitioner prays an appeal to the Supreme Court of the United States from each and every of said orders* and the whole thereof.

Your petitioner herewith offers to your honor a bond according to law, to be approved by you, and prays the allowance of appeal and a citation according to law.

Dated December 29, 1864.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY,
By MATT. H. CARPENTER, *Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

December 31st, 1864. I hereby allow this appeal prayed for within by the Milwaukee and Minnesota Railroad Company to the Supreme Court of the United States.

A. G. MILLER, *District Judge.*

Filed January 18th, 1865.

Appeal bond of Milwaukee and Minnesota Railroad Company.

Know all men by these presents, that we, the Milwaukee and Minnesota Railroad Company, as principal, and Austin Gunnison and Josiah A. Noonan as sureties, are held and firmly bound unto James T. Soutter and Shepherd Knapp, survivors of Greene C. Bronson, deceased, in the just and full sum of five hundred dollars, to be paid to the said Soutter and Knapp or their certain attorney, executors, administrators, or assignees, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals,
1283 and dated this 29th day of December A. D. 1864.

Whereas lately, at a term of the district court of the United States for the district of Wisconsin, in a suit depending in said court, in equity, between the said Bronson, the said Soutter, and said Knapp, complainants, and the La Crosse and Milwaukee Railroad Company and the Milwaukee and Minnesota Railroad Company and others were defendants, certain orders were made by said court, in said cause, against the said Milwaukee and Minnesota Railroad Company, and said last named having prayed and obtained an appeal from said orders to the Supreme Court of the United States, and filed a copy thereof in the office of the clerk of the circuit court of the United States for the district of Wisconsin, in which last-named court the record in said suit is remaining to reverse the said orders, and a citation directed to the said Soutter and Knapp, survivors of said Bronson, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, the first Monday of December, A. D. 1865, having been duly issued and filed.

Know the condition of the above obligation is such that if the Milwaukee and Minnesota Railroad Company shall prosecute said appeal to effect and answer all damages and costs, if it shall fail to make said appeal good, then this obligation to be void, otherwise to remain in full force and virtue.

1284 Witness our hands and seals at Milwaukee, in said district, this 29th day of December, A. D. 1864.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY,
By DWIGHT W. KEYES, *Secretary.*
[SEAL.] AUSTIN GUNNISON, [SEAL.]
J. A. NOONAN, [SEAL.]

DISTRICT OF WISCONSIN, *ss:*

Austin Gunnison and Josiah A. Noonan being first several duly sworn, each for himself on oath says, that he is worth the sum of one thousand dollars over and above all debts and liabilities and exceptions of property from forced sale on execution.

AUSTIN GUNNISON.
J. A. NOONAN.

Subscribed and sworn to before me this 29th day of December, A D. 1864.
FRANCIS BLOODGOOD,
U. S. Circuit Court Com'r, Dist. Wis.

DISTRICT OF WISCONSIN, *ss:*

I hereby approve this bond and the sureties thereof this 31st day of December, A. D. 1864.

A. G. MILLER, *District Judge.*

Filed Jan'y 18, 1865.

1286 And the monthly reports of the receiver filed in said cause are as follows:

Rec'r's report for June, 1860.

U. S. dist. court for the district of Wisconsin.

GREENE C. BRONSON and others
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the Hon. Andrew G. Miller, judge of said court:

I hereby report that the receipts and disbursements of the La Crosse and Milwaukee railroad from the 11th June, when I entered into the possession of the same, to the 30th June, 1860, inclusive, are as follows, viz:

Receipts:		
For freight	19,448 70	
" passengers and foreign tickets	10,564 87	
" express and miscellaneous	1,057 67	
		$31,071 24
Disbursements:		
For advance charges	6,286 40	
" bills of supplies	3,248 13	
" foreign ticket balances	4,528 88	
" right of way, e. div.	25 00	
" incumbrances on depot ground, east div.	820 09	
" mechanic's liens, w. div	300 00	
" pay rolls, month of May	12,223 64	
" " " " June	520 78	
		$27,952 92
Balance		$3,118 32

District court of the U. S. for the district of Wisconsin.

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of the moneys received by him as receiver of the La Crosse and Milwaukee railroad, from 11th June to 30th June, 1860; also of the disbursements on account of
1287 said road for the same time, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, a notary public in and for the county of Milwaukee and State of Wisconsin, this 14th July, 1860.

DWIGHT W. KEYS,
Notary Public, Milwaukee Co., Wis.

Filed July 14, 1860.

July, 1860.

District court of the U. S. for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER and SHEPARD KNAPP
v.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the Hon. A. G. Miller, judge of said court:

I hereby submit my monthly report of the moneys received and disbursed by me, as receiver of the La Crosse and Milwaukee railroad, for the month of July, 1860.

H. CROCKER, *Receiver.*

Receipts:		
Balance on hand 30th June, 1860	3,118 32	
Receipts for freight	25,189 76	
" for passengers and foreign tickets	27,367 15	
" for express and miscellaneous matters	954 64	
" for mails	496 53	
		$57,126 40

Disbursements:		
For pay-rolls	21,551 30	
" supplies	11,862 15	
" foreign ticket balances	8,088 70	
" incumbrances on real estate, w. div	1,500 00	
" " " " e. div	2,180 18	
" right of way, w. div	860 00	
" purchase of rolling stock	10,000 00	
" advanced charges	7,799 56	
		$63,331 89
Disbursements over receipts		$6,205 49

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing statement contains a true and accurate account according to the best of his knowledge, information, and
1288 belief, of the receipts and disbursements of the La Crosse and Milwaukee railroad, as received and paid by him as receiver of said road, for the month of July, 1860.

H. CROCKER.

Subscribed and sworn to before me this 14th day of August, A. D. 1860.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed Aug. 14, 1860.

August, 1860.

District Court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
v.
THE LA CROSSE and MILWAUKEE RAILROAD CO. and others

To the Hon. Andrew G. Miller, judge of said court:

I herewith submit my monthly report of the moneys received and disbursed by me, as receiver of the La Crosse and Milwaukee R. road, for the month of August, 1860.

H. CROCKER, *Receiver.*

Receipts:		
For freight	25,024 09	
Passengers and tickets	27,466 11	
Express and miscellaneous	1,127 69	
Mails	8,093 54	
		$61,711 43

Disbursements:		
Overpaid for month of July	6,025 49	
Pay-rolls	19,326 00	
Supplies	8,046 00	
Ticket balances	12,597 44	
Advanced charges	8,550 96	
Incumbrances on real estate e. d'v	3,000 00	
w. d.	508 66	
Right of way, e. d'v	430 10	
w. d'v	775 09	
Bal. on hand	2,271 79	
		$61,711 43

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a correct statement, according to the best of his information and belief, of the moneys received and disbursed by him, as receiver of the La Crosse and Milwaukee R. road, for the month of August, 1860.

H. CROCKER.

1289 Sworn to before me this 19th day of September, A D. 1860

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed Sept. 19, 1860.

September, 1860.

District court of the U. S., district of Wisconsin.

GREENE C. BRONSON and J. T. SOUTTER
v.
THE LA CROSSE and MILWAUKEE RAILROAD CO. and others.

To the Hon. A. G. Miller:

I herewith submit the monthly statement of the moneys received and disbursed by me as receiver of the La Crosse and Milwaukee railroad for the month of September, 1860.

Receipts:

Balance on hand Aug. 31, '60	2,271 79	
From freight	92,483 35	
" passengers and foreign tickets	33,012 48	
" express and miscellaneous	829 04	
		128,596 66

Disbursements:

For pay-rolls	30,966 81	
" bills of supplies	19,339 90	
" ticket balances	6,738 75	
" advanced charges	25,425 93	
" incumbrances on real estate, east div	2,958 72	
Do west div	140 00	
" right of way east "	425 00	
Do west "	4,583 08	
" rolling stock	8,175 93	
Balance on hand Sept. 29, '60	29,842 54	
		128,596 66

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing statement of the receipts and disbursements by him, as receiver of the La Crosse and Milwaukee railroad for the month of September, 1860, is true to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 13th day of October, A. D. 1860.

A. G. MILLER, Jr.,
Not. Pub., Mil. Co., Wis.

Filed Oct. 15, 1860.

1290 District court of the U. S., district of Wisconsin.

October, 1860.

GREENE C. BRONSON and JAMES T. SOUTTER
vs.
LA CROSSE and MILWAUKEE RAILROAD CO. and others.

To the Hon. Andrew G. Miller, judge of said court:

I herewith submit my account of receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of October, 1860.

H. C. CROCKER, *Rec'r.*

Receipts:

Bal. on hand Oct. 1, 1860	29,842 54	
From freight	150,005 42	
" passengers and foreign tickets	38,065 42	
" express and miscellaneous	645 29	
		218,558 67

Disbursements:

For pay-rolls	23,000 00	
" bills of supplies	21,729 97	
" ticket balances	12,828 86	
" advanced charges	37,076 73	
" incumbrances on real estate, east div	13,116 29	
" ....do.... west "	160 00	
" right of way east "	176 50	
" ....do.... west "	464 25	
" rolling stock	18,387 53	
" taxes	157 00	
" interest on 1st mort. bonds	15,089 40	
Bal. on hand Oct. 31, 1860	76,372 14	
		218,558 67

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true statement of the receipts and disbursements by him, as receiver of the La Crosse and Milwaukee railroad, during the month of October, 1860, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 12th day of November, A. D. 1860.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed Nov. 12, 1860.

1291 *November*, 1860.

District court of U. S., district of Wis.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPARD KNAPP
vs.
LA CROSSE and MILWAUKEE R. Co. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements as receiver of the La C. and Mil. R. for November, 1860.

H. CROCKER, *Receiver.*

Balance on hand Nov. 1, 1860	76,372 14	
Received freight	108,748 16	
Passengers and foreign tickets	36,119 98	
Express and miscellaneous	1,002 00	
		222,242 28

Disbursements:

Pay-rolls	26,167 25	
Bills for material	25,291 85	
Ticket balances	9,459 16	
Advanced charges on freight	16,981 67	
Incumbrances on real estate, east div	8,749 53	
Do west "	300 00	
Right of way east "	14 50	
Do west "	1,920 00	
Rolling stock	9,381 59	
Taxes	69 54	
Miscellaneous	1,560 99	
Coupons on 1st mort. bonds	17,459 70	
Balance on hand	104,886 50	
		22,242 28

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad, according to the best of his knowledge, information, and belief for November, 1860.

H. CROCKER.

Subscribed and sworn to before me this 20 day of December, 1860.

A G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed Dec. 21, 1860.

1292 *December*, 1860.

District court of the U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
THE LA C. and MIL. R. CO. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for December, 1860.

H. CROCKER, *Receiver.*

Receipts:

From freight	34,607 83	
" passengers and foreign tickets	25,084 38	
" Post Office Department	6,102 00	
" express and miscellaneous	1,366 18	
Balance on hand Dec. 1, 1860	104,886 50	
		172,046 89

Disbursements:

For pay-rolls	22,605 05	
" bills of supplies	13,592 77	
" ticket balances	6,620 21	
" advanced charges	9,903 35	
" incumbrances, east div	1,181 92	
" " west "	300 00	
" right of way, east "	235 00	
" " west "	1,145 00	
" rolling stock	14,564 17	
" 1st mort. bond coupons	1,830 60	
" miscellaneous expenses	2,623 48	
Balance on hand Dec. 31, '60	97,445 34	
		172,046 89

DISTRICT OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad for the month of December, 1860, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 21st day of Jan'y, A. D. 1860.

A. G. MILLER, JR.,
Not. Pub, Mil. Co., Wis.

Filed Jan'y 22, 1861.

1293 *January*, 1861.

District court of U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
THE LA CROSSE & MILWAUKEE RAILROAD CO. and others.

To the Hon. A. G. Miller, judge of said court:

I hereby submit my report of receipts and disbursements, as receiver of the La Crosse & Mil. R., for the month of January, 1861.

H. CROCKER, *Receiver.*

Receipts:

From freight	46,749 29	
" passengers and foreign tickets	16,772 52	
" Post Office Depart	47 68	
" express and miscellaneous	674 19	
On hand Jan'y 1, 1861	97,445 34	
		161,689 02

Disbursements:

For pay-rolls	18,464 25	
" bills of supplies	12,301 18	
" foreign ticket balances	11,299 38	
" advanced charges	2,941 67	
" incumbrances on real estate, east div	2,695 09	
" right of way " "	783 10	
" " " " west "	195 00	
" coupons 1st mort bonds	375 60	
" " city of Mil. "	3,980 46	
Balance on hand Feb. 1, 1861	108,653 29	
		161,609 02

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse & Milwaukee railroad, for the month of January, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before this 18th day of February, 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed Feb'y 19, 1861.

1294 *February*, 1861.

District court of the U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMP'Y and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements, as receiver of the La C. & Mil. R., for the month of February, 1861.

H. CROCKER, *Receiver.*

Receipts:

From freight	34,748 36	
" passengers and foreign tickets	14,291 35	
" express and miscellaneous	1,215 92	
On hand Feb. 1, '61	108,653 29	
		158,908 92

Disbursements:

For pay-rolls	19,631 20	
" bills of supplies	12,283 68	
" foreign tickets	3,398 36	
" advanced charges	4,875 96	
" right of way, east div	735 00	
" " " " west "	438 04	
" La Crosse depot extension	645 81	
" fencing	80 00	
" State tax	7,564 76	
" legal expenses	1,094 91	
" rolling stock	3,427 91	
Balance on hand M'ch 1, 1861	104,728 29	
		158,998 92

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse & Milwaukee railroad, for the month of February, 1861, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 11 day of March, 1861.

A. G. MILLER, Jr.,
Not. Pub., Mil. Co., Wis.

Filed March 11, 1861.

1295 *March*, 1861.

District court of the U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHIPERD KNAPP
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements, as receiver of the La C. & Mil. R., for the month of March, 1861.

H. CROCKER, *Rec.*

Receipts:

Bal. on hand M'ch 1, '61	104,726 29	
From freight	42,278 64	
" passengers and foreign tickets	18,311 85	
" mails	3,095 41	
" express and miscellaneous	1,332 34	
		169,746 52

Disbursements:

For pay-rolls	$20,674 45	
" bills of supplies	17,649 90	
" foreign ticket balances	5,783 41	
" advanced charges	6,845 49	
" right of way, east div	166 86	
" " " " west "	438 24	
" La Crosse elevator	3,711 83	
" fencing	1,170 54	
" discount and commission	542 03	
" coupons 1st mort. bonds	33,586 40	
" " city of Mil. "	12,592 00	
Bal. on hand carried to next ac	66,585 38	
		169,746 53

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La C. & Mil. R., for the month of March, 1861, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 17 day of April, 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed April 17, 1861.

April, 1861.

1296. District court of the U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPERD KNAPP
vs.
THE LA CROSSE & MILWAUKEE RAILROAD CO. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements for April, 1861.

H. CROCKER, *Rec.*

Receipts:

From freight	65,740 66	
" passengers and for tickets	23,495 07	
" mails	827 15	
" express and miscellaneous	1,126 73	
On hand, Ap'l 1, 1861	66,585 38	
		157,774 99

Disbursements:

For pay-rolls	22,387 96	
bills of supplies	20,733 54	
foreign ticket balances	3,446 59	
advanced charges	26,117 69	
incumbrances on real estate, east div	9 19	
right of way, east div	90 00	
" west "	16 50	
La Crosse elevator	1,818 24	
fencing	400 00	
Cleveland judgment	28,801 92	
discount and commission	75 01	
coupons, 1st mort. bonds	525 60	
do. city of Mill	1,782 28	
		106,204 52
Bal. on hand to next ac		51,570 47
		157,774 99

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of April, 1861, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 11th day of May, 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed May 13th, 1861.

May, 1861.

1,297 District court of the U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPERD KNAPP,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD CO. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report, as receiver of the La Crosse & Milwaukee R. R., for the month of May, 1861.

H. CROCKER, *Receiver.*

Receipts:		
From freight	$112,711 56	
passengers and foreign tickets	23,750 44	
mails	887 87	
express and miscellaneous	594 83	
Balance on hand, May 1, 1861	51,570 47	
		$189,515 17
Disbursements:		
For pay-rolls	$24,392 00	
bills of supplies	26,505 04	
foreign ticket ac	3,129 12	
advanced charges	19,231 09	
incumbrances, R est. ca. div	825 30	
right of way, east div	408 00	
" west div	165 00	
La Crosse elevator	414 23	
fencing	525 00	
on ac. interest on land gt. mtge	2,500 00	
" " second "	2,500 00	
L. Ward, receiver	295 12	
interest 1st mtge. bonds	4,616 20	
" city of Mil. "	1,255 97	
disct. and commission	129 40	
Bal. to next account	102,623 70	
		$189,515 17

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing, to the best of his knowledge, information, and belief, is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse & Milwaukee R. R., for the month of May, 1861.

H. CROCKER.

Subscribed and sworn to before me this 15th day of June, A. D. 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed June 15, 1861.

June, 1861.

1,298. District court of the U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPERD KNAPP,
vs.
THE LA CROSSE & MILWAUKEE R. R. COMPANY and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver for the month of June, 1861.

H. CROCKER, *Receiver.*

Received:		
From freight	$102,957 17	
" passenger and foreign tickets	32,079 65	
" express and miscellaneous	4,445 68	
Bal. on hand, June 1, 1861	102,623 70	
		$242,116 20

Disbursements:

For pay-rolls	$30,470 00	
" bills of supplies	38,546 79	
" foreign balances	6,518 48	
" adv. charges	21,788 10	
" right of way, eastern div	1,542 00	
" " western "	100 00	
" La Crosse elevator	361 46	
" fencing	1,933 90	
" law expenses	26 94	
" cattle killed during Chamberlain administration	700 00	
" disc't, com'n, and exchange	1,000 55	
" coupons, 1st mort. bonds	2,465 60	
" " city of Mil. "	3,065 25	
Balance on hand to next account	133,597 13	
		$242,116 20

1,299.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Mil. railroad, for the month of June, 1861, to the best of his knowledge, information, and belief

H. CROCKER.

Subscribed and sworn to before me this 12th July, 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed July 13, 1861.

July, 1861.

District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAS. T. SOUTTER, and SHEPERD KNAPP,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD CO and others.

To the Hon. A. G. Miller, judge of the said court:

I herewith submit my report as receiver for the month of July, 1861.

H. CROCKER, *Receiver.*

Receipts:

Balance on hand, July 1, 1861	$133,597 13	
From freight	88,319 18	
" passengers and foreign tickets	27,220 11	
" express and miscellaneous	3,153 34	
		$252,289 76

D'sbursements:

For pay-rolls	$32,228 25	
" bills of supplies	26,605 62	
" f'gn balances and adv. chgs	37,620 42	
" right of way, east div	135 00	
" fencing	859 44	
" Cleveland judgment	30,000 00	
" land grant m't'ge	20,000 00	
" L Ward, rec'r, ac	4,953 62	
" rolling stock	4,750 00	
" exchange	832 89	
" city of Milwaukee bond coups	4,079 07	
" first m'tg'e bond coupons	2,429 81	
" real estate bond coupons	127 20	
Bal. to next ac	87,669 04	
		$252,289 76

1300 STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, saith that the foregoing is a true and accurate statement of his receipts and disbursements as the receiver of the La Crosse and Milwaukee railroad, for the month of July, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 14th day of August, 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed Aug. 14, 1861.

August, 1861.

District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAS. T. SOUTTER, and SHEPARD KNAPP
vs.
THE LA CROSSE & MILWAUKEE R. R. Co. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report for August, 1861.

H. CROCKER, *Rec.*

Receipts:

From freight	65,835 33	
From passengers and foreign tickets	22,699 44	
" mails	4,739 03	
" express and miscellaneous	1,511 75	
Bal'e on hand Aug. 1, 1861	87,669 04	
		$182,454 59

Disbursements:

Pay-rolls	$33,127 10	
Bills of supplies	36,426 18	
Foreign tickets ac	6,406 38	
Advance charges	10,311 84	
Incumbrances, east'n div'n	200 00	
Right of way, east div	404 12	
" " west "	196 00	
Fencing	2,526 64	
Rolling stock	28,804 85	
Taxes, (special)	226 38	
Exchg., disc't, and commission	3,624 82	
Coupons, 1st mortgage	29,431 12	
" city of Milwaukee	14,988 70	
Balance on hand Sep. 1, '61	15,780 56	
		$182,454 59

1301 STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, says that the foregoing statement of receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of Augt., A. D. 1861, is true and correct to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 16 day of Sept., 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed Sept., 16, 1861.

September, 1861.

District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAS. T. SOUTTER, and SHEPARD KNAPP
vs.
THE LA CROSSE & MILWAUKEE R. R. COMPANY & others.

To the Hon. A. G. Miller, judge of said court:

Herewith I hand you my report of receipts and disbursements for mo. September, 1861

H. CROCKER, *Rec.*

Receipts:		
From freight	$94,133 13	
" passenger and foreign tickets	30,113 29	
" mails	4,445 86	
" express and miscellaneous	1,247 15	
On hand Sept. 1, 1861	15,780 56	
		$145,719 99

Disbursements:		
For pay-rolls	$35,757 09	
" bills of supplies	31,613 12	
" advance charges	19,049 28	
" foreign ticket ac	7,414 48	
" right of way, east div	735 36	
" " " " west div	46 50	
" fencing	504 47	
" interest 1st m'tg'e bonds	5,847 60	
" " city of Mil	6,270 78	
" L. Ward, rec'r, ac	3,637 73	
" int. land grant bonds	6,500 00	
" rolling stock	15,748 40	
Bal. on hand Octo. 1, '61	12,595 18	
		$145,719 99

1302 STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of September, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 9th day of October, A. D. 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed, Oct. 9, 1861.

October, 1861.

District court of the U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, & SHEPARD KNAPP
vs.
THE LA CROSSE & MIL. R. R. Co. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report, as receiver, of the receipts and disbursements for October, 1861.

H. CROCKER, *Receiver.*

Receipts:		
On hand Octo. 1, 1861	$12,595 18	
From freight	167,855 57	
" passengers and f'gn tickets	38,903 93	
" mails	638 68	
" express and miscellaneous	1,419 11	
		$221,412 47

Disbursements:

For pay-rolls	$32,981 38	
" bills of supplies	41,003 14	
" advance charges	31,321 25	
" foreign ticket ac	9,539 94	
" right of way, east division	1,066 68	
" do do west do	93 00	
" fencing	3,105 70	
" rolling stock	9,170 80	
" land grant interest	1,515 00	
" exchange, discount, and com'n	27 44	
" city of Milwaukee bond coupons	4,524 78	
" 1st m'tg'e " "	6,868 00	
" L. Ward, rec'r, acc't	7,239 48	
Balance on hand Nov. 1, '61	72,955 88	
		$221,412 47

1303 STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposes and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of October, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this eighteenth day of October, A. D. 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed Nov. 19, 1861.

November, 1861.

District court of the U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, & SHEPARD KNAPP
vs.
THE LA CROSSE & MILWAUKEE RAILROAD CO. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report, as receiver, showing the receipts and disbursements for the month of November, 1861.

H. CROCKER, *Rec.*

Receipts:

Balance on hand Novem. 1, '61	$72,955 88	
From freight	122,776 43	
" passengers and f'gn tickets	34,128 25	
" mails	8 69	
" express and miscellaneous	2,411 21	
		$232,280 46

Disbursements:

For pay-rolls	$39,604 36	
" bills of supplies	27,253 82	
" foreign ticket ac	6,707 19	
" adv. charges	18,869 14	
" r. of way, east div	419 90	
" r. of way, west div	109 64	
" fencing	3,197 02	
" land grant m't'ge	11,985 00	
" sinking fund	12,000 00	
" L. Ward, rec'r, ac	9,729 22	
" Helfenstein m't'ge	3,451 33	
" fire insurance	2,219 98	

1304	For Chi. and North W. R'y ac	$3,393 88	
	" exchange, dis., and com	122 53	
	For coupons, 1st m't'ge	33,290 70	
	" " city of Mil	1,838 18	
	Bal. on hand Sept. 1, '61	58,088 57	
			$232,280 46

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, says that the foregoing is a true and accurate account of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of November, A. D. 1861, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 9th day of December, A. D. 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed Dec. 9, 1861.

December, 1861.

DISTRICT COURT OF THE UNITED STATES,
District of Wisconsin, ss:

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
THE LA CROSSE & MIL. R. R. CO.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver, showing my receipts and disbursements for the month of Decem., 1861.

H. CROCKER, *Rec.*

Receipts:

	For freight	$70,950 12	
	" passengers and f'gn tickets	31,947 95	
	" express and miscellaneous	2,256 45	
	" mails	4,390 13	
	" telegraph	40	
	Balance on hand Dec. 1, '61	58,088 57	
			$167,633 62

Disbursements:

	For pay-rolls	$34,612 20	
	" bills supplies	47,752 85	
	" foreign ticket ac	8,635 51	
	" advance charges	6,673 35	
	For incumbrances, east division	71 70	
1305	" right of way, east division	20 00	
	" " west "	95 37	
	" fencing	78 00	
	" L. Ward, rec'r, ac	46 96	
	" Chicago & N. W. Ry. ac	2,288 86	
	" legal expenses	299 40	
	" exchange, dict's, and commission	201 05	
	" 1st m't'ge bond coupons	1,696 80	
	" city of Milwaukee "	866 07	
	" bal. on hand Jan. 1, '62	59,645 86	
			$167,633 62

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of December, 1861, according to his knowledge, information, and belief.

Subscribed and sworn to before me this twenty-first day of January, A. D. 1862.

J. A. PERIE,
Notary Public, Milw. Co.

Of the above receipts, $17,525 62 were received after the 31st day of December, but were earned in December.

H. CROCKER.

Filed January 22, 1862.

January, 1862.

DISTRICT COURT OF THE UNITED STATES,
District of Wisconsin, ss:

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
LA CROSSE & MILWAUKEE R. R.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse & Milwaukee railroad, showing receipts and disbursements for month of January, 1862.

H. CROCKER, *Receiver.*

Receipts:

Freight	$39,067 60	
Passengers and foreign tickets	8,553 15	
Express and miscellaneous	1,031 29	
Mails	1,428 02	
Balance on hand January 1, 1862	59,645 86	
		$109,725 92

1306 Disbursements:

Pay-rolls	$26,258 30	
Bills supplies	27,404 87	
Foreign ticket ac.	5,826 74	
Advance charges	2,486 45	
Right of way, eastern division	4,239 06	
" western division	648 75	
Fencing	1,520 64	
Exchange and discount	37 25	
First mortgage bond coupons	585 80	
City of Milwaukee " "	406 52	
L Ward, receiver, ac	3,027 06	
W. F. Davidson, pres't L. C. & M. P'kt Co	527 53	
Chicago & N. Western R. R. Co	2,847 07	
Costs in suits	2,276 22	
Balance on hand Feb. 1, 1862	31,633 66	
		$109,725 92

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse & Milwaukee railroad, for the month of January, 1862, according to his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this twenty-fifth day of February, A. D. 1862.

W. L. HINSDALE,
Notary Public, Milwaukee Co., Wis.

Filed Feb. 25, 1862.

February, 1862.

DISTRICT COURT OF THE U. STATES,
District of Wisconsin, ss:

GREENE C. BRONSON, JAMES T. SOUTTER, & SHEPARD KNAPP
vs.
THE LA CROSSE & MILWAUKEE R. R. Co.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of February, 1862.

H. CROCKER, *Rec.*

Receipts:

Balance on hand Feb'y 1, '62		$31,633 66	
From passengers and f'gn tickets		13,311 86	
1307 From freights		40,741 11	
" express and miscellaneous		3,720 62	
From telegraph		80	
			$89,408 05

Disbursements:

For pay-rolls		$25,382 54	
" bills of supplies		29,242 48	
" foreign ticket ac		2,903 21	
" advance charges		2,233 26	
For inc'd E. div. (R. est. coupons)		121 20	
" right of way, W. div		54 75	
" fencing		104 64	
For first m't'ge bond coupons		1,086 20	
" exchange and discount		15 58	
" Chicago & N. W. R'y ac		1,739 11	
Balance on hand M'ch 1		26,525 08	
			$89,408 05

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad, for the month of February, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 22d day of March, A. D. 1862.

W. L. HINSDALE,
Notary Public, Mil. Co., Wis.

Filed March 22, 1862.

March, 1862.

District court of the U. States, district of Wisconsin.

GREENE C. BRONSON, JAS. T. SOUTTER, & SHEPARD KNAPP
v.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY.

Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of March, 1862.

H. CROCKER, *Receiver.*

Receipts:

On hand M'ch 1, '62	$26,525 08	
From freight	37,766 06	
" pass. and f'gn tickets	14,604 35	

1308	From express and miscellaneous	1,465 64	
	" telegraph	56	
			$80,361 69

Disbursements:

From pay-rolls	$26,488 19	
" bills supplies	25,865 65	
" f'gn tk't acc	3,914 87	
" adv. ch'gs	4,484 52	
" right of w., east. div	35 00	
" ch. and N. W. R'y act	2,584 46	
" exch. and disc't	6 03	
" first m't'ge bond coupons	120 60	
" Milw. city do	8,973 13	
On hand April 1, '62	7,889 24	
		$80,361 69

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposes and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of March, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 16th day of April, A. D. 1862.

W. L. HINSDALE,
Notary Public Milw. County.

Filed April 16, 1862.

April, 1862.

DISTRICT COURT OF THE U. STATES.
District of Wisconsin, ss:

GREENE C. BRONSON, JAMES T. SOUTTER, & SHEPARD KNAPP,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of April, 1862.

H. CROCKER, *Receiver.*

Receipts:

Balance on hand April 1, '62		7,889 24	
From freight		35,363 85	
1309	" passengers and f'gn ticket acc	18,138 27	
	" express and miscellaneous	3,543 55	
From mails		5,544 29	
			$70,479 20

Disbursements:

For pay rolls	27,813 12	
" bills supplies	23,078 33	
" foreign ticket acc	1,627 15	
" advance charges	12,394 94	
" right of way, E. div	291 37	
" right of way, W. div	400 85	
" fencing	800 00	
" La Crosse and Minn. Pk't. Co. acc	2,500 00	
" Chicago and N. W. R. R. Co. acc	6,121 55	
" exchange and interest	302 04	
" 1st m't'ge bond coupons	40 30	
" Milwaukee city bond coupons	722 71	
		76,092 36
Disbursements over receipts		$5,613 16

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad, for the month of April, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 19th day of May, A. D. 1862.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Filed May 20, 1862.

May, 1862.

DISTRICT COURT OF THE UNITED STATES,
District of Wisconsin, ss:

GREENE C. BRONSON, JAMES T. SOUTTER, & SHEPARD KNAPP
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of May, 1862.

H. CROCKER, *Rec.*

1310 Receipts:

From freight	$127,973 98	
" passengers and f'gn tickets	20,807 30	
" express and miscellaneous	1,595 91	
" mails	3,096 44	
" for transportation of troops	13,942 30	
" telegraph	1 84	
		$167,417 77

Disbursements:

For am't overpaid in April	5,613 16	
" pay-rolls	33,836 40	
" for bills supplies	41,673 19	
" foreign ticket acc	5,370 39	
" advance charges	23,419 61	
" incumbrances, west div. (Chamberlain)	7,908 19	
" incumbrances, east div	93 28	
" right of way, west div	250 00	
" fencing	72 82	
" Chicago and Northwest R'y Co. acct	3,308 20	
" L. Ward, rec'r, acc	9,785 59	
" 1st m't'ge bond coupons	100 55	
" Milw. city bond coupons	1,108 68	
Balance on hand May 31, '62	34,877 71	
		$167,417 77

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad, for the month of May, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 19th day of June, A. D. 1862.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Filed June 20, 1862.

June, 1862, *report.*

District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, & SHEPERD KNAPP
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

To the Hon. A. J. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of June, 1862.

H. CROCKER, *Rec.*

1311 Receipts:

On hand June 1, 1862	$34,877 71
From freight	113,108 13
" passengers and foreign ticket ac	25,719 71
" express and miscellaneous	1,244 50
" transportation of troops	27,963 08
	$202,913 13

Disbursements:

For pay-rolls	$40,009 36	
" bills supplies	45,262 42	
" foreign ticket ac	4,224 62	
" advance charges	16,877 96	
" incumbrances west div., Chamberlain	8,998 45	
" right of way, east div	100 00	
" fencing	870 43	
" La C. & Min. Steam P'k't Co. ac	3,517 25	
" Chi. & N. Western R'y Co. ac	2,211 78	
" foreclosure 2d m'tg'e expenses	5,000 00	
" one-half of State tax for 1861	16,062 33	
" exchange	218 68	
" Milwaukee city bond coupons	70 36	
Bal. on hand June 30, '62	59,489 49	
		$202,913 13

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse & Milwaukee railroad, for the month of June, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 17th day of July, A. D. 1862.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Filed July 18, 1862.

1312 *July*, 1862, *report.*

DISTRICT COURT OF THE UNITED STATES,
District of Wisconsin, ss:

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of July, 1862.

H. CROCKER, *Rec'r.*

Receipts:

Balance on hand July 1, 1862	$59,489 49
From freight	105,227 33
" pass and foreign tickets	34,091 98
" express and miscellaneous	1,054 52
" transp't of mails	2,604 23
" telegraph	11 93
	$202,479 48

Disbursements:

For pay-rolls	$39,154 65	
" bills supplies	35,901 85	
" foreign t'k't ac	5,244 87	
" advance charges	18,844 00	
" grading, paving, and sewerage, E. div	1,169 53	
" incumbrances, E. div	120 30	
" right of way, W. div	30 09	
" fencing	1,300 05	
" L. Ward, rec'r, acc	14,631 82	
" Chicago & N. W. R'y acc	8,803 32	
" coupons 1st m't'ge bonds	33,746 05	
" " city of Mil. "	35 10	
Bal. on hand Aug't 1, '62	43,497 94	
		$202,479 48

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse & Milwaukee railroad, for the month of July, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

1313 Subscribed and sworn to before me this 22d day of August, A. D. 1862.

W. L. HINDSDALE,
Notary Public, Mdw. Co, Wis.

Filed August 22, 1862.

August, 1862.—*Report.*

DISTRICT COURT OF THE UNITED STATES,
District of Wisconsin, ss:

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report, as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of Aug't, 1862.

H. CROCKER, *Rec'r.*

Receipts:

Bal. on hand Aug't 1, '62	$43,497 94
From freight	60,914 40
" passenger and f'g'n ticket acc	28,342 23
" express and miscellaneous	973 16
" transportation of mails	2,433 27
" telegraph	10 18
	$136,171 18

Disbursements:

For pay-rolls	$37,453 20	
" bills of supplies	40,841 54	
" foreign ticket acc.	8,553 63	
" advance charges	11,771 91	
" grading, paving, and sewerage, E. div	2,786 66	
" right of way, W. div	68 00	
" Chi. & N. W. R'y acc.	2,168 28	
" La C. & Minn. S. P'k't Co	4,566 22	
" L. Ward, rec'r, acc.	6,503 59	
" 1st m't'ge bond coupons	2,085 20	
" city of Milw. "	315 79	
Bal. on hand Aug't 31, '62	19,057 16	
		$136,171 18

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true
1314 and accurate statement of his receipts and disbursements, as receiver of the La Crosse & Milwaukee railroad, for the month of August, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 22d day of September, A. D. 1862.

W. L. HINSDALE,
Notary Public, Mil. Co., Wis.

Filed Sept 23, 1862.

September, 1862.—*Report.*

District court U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

Hon. A. G. Miller, judge of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of Sept., 1862.

H. CROCKER, *Rec.*

Receipts:

Balance on hand Sept. 1, 1862		19,057 16
From freight		126,774 66
" passengers and for. tickets		42,865 35
" express and miscellaneous		1,113 74
" telegraph		34 55
		$189,845 46

Disbursements:

Pay-rolls	30,524 60	
Bills supplies	26,816 13	
For'n tickets	9,356 09	
Advanced charges	16,556 27	
Grading, paving, and S. E. D	1,245 23	
Right of way, E. D	623 00	
Do. do. W "	428 00	
La C. and Minn. St'm P'k't Co. acc't	4,211 46	
Chicago and NW. r'y acc't	872 99	
L. Ward, rec'r's, acc't	3,523 51	
S. D. Hastings, treas'r, taxes	16,062 33	
Money ret'd U. S. dep't, trans. troops	93 96	
Legal expenses (costs in suit of Carney)	56 75	
First mortgage bonds, coupon	409 01	
City Milwaukee do.	8,627 80	
Balance on hand Sept. 30, 1862	70,438 33	
		$189,845 46

1315 STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker, being duly sworn, deposeth and says: That the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Wilwaukee railroad, for the month of September, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 14th day of October, A. D. 1862.

W. L. HINSDALE,
Notary Public, Mdw. Co., Wis.

Filed Oct. 14, 1862.

October, 1862.—*Report.*

District Court of the U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
LA CROSSE & MILWAUKEE RAILROAD COMPANY.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of October, 1862.

H. CROCKER, *Rec.*

Receipts:

Cash on hand Oct. 1, 1862	70,438 33
From freight	161,021 94
" passengers and foreign tickets	38,426 95
" express and miscellaneous	942 00
" telegraph	17 58
	$270,846 80

Disbursements:

For pay-rolls	33,835 60	
" bills supplies	31,492 25	
" foreign tickets	6,467 37	
" advance charges	25,178 47	
" grading P. and sewerage, E. D	571 16	
" right of way, E. D	1,200 00	
" fencing	1,612 37	
" Chicago and NW. r'y ac't	12,412 95	
" La Crosse and Minn. St'm P'k't ac't	2,889 27	
" L. Ward, receiver	4,957 66	
For rolling stock	22,100 00	
1316 For legal expenses, sale E. D	1,157 39	
" " "	10 50	
For first mortgage bonds, coupons	533 30	
" city Mil'w " "	2,547 35	
Bal. on hand Oct. 31, 1862	123,881 16	
		$270,846 80

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposes and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of October, 1862, according to his best information, knowledge, and belief.

H. CROCKER.

Subscribed and sworn to before me this 18th day of November, A.D. 1862.

W. L. HINSDALE.
Notary Public, Mdw. Co., Wis.

Filed Nov. 18, 1862.

November, 1862.—*Report.*

Circuit court of the U. S., district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY. } *ss.*

To the hon. judges of said court:

I herewith submit my report as receiver, showing my receipts and disbursements for the month of November, 1862.

H. CROCKER, *Rec.*

Receipts:

Balance on hand November 1, 1862	123,881 16
Freight	128,397 21
Passengers and foreign ticket acc't	33,670 27
Express and miscellaneous	1,978 69
Chicago and N. Western Railway Co. acc't	925 38
Telegraph	50 09
	$288,902 80

Disbursements:

Pay-rolls	39,507 44	
Bills supplies	35,578 11	
Foreign tickets	11,583 44	
Advance charges	21,756 03	
Grading, paving, and S. E. D.	1,483 88	
1317 Right of way, E. D.	309 15	
do. W. D.	21 00	
Fencing	400 00	
Rolling stock	516 20	
Fire insurance	2,300 00	
L. Ward, rec'r, acc't	3,833 00	
First mort. bond, coupons	31,784 59	
City Milwaukee do	157 97	
Bal. cash on hand	139,671 99	
		$288,902 80

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of November, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this — day of November, A. D. 1862.

H. CROCKER.

Filed Dec. 19, 1862.

December report, 1862.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
LA CROSSE & MILWAUKEE RAILROAD.

U. S. CIRCUIT COURT,
District of Wisconsin, ss:

To the hon. judges of said court:

I herewith submit my report, as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of December, 1862.

H. CROCKER, *Receiver.*

Receipts:

Balance on hand November 30, 1862	$139,671 99	
From freight	48,031 04	
" passengers and foreign tickets	41,609 67	
" express and miscellaneous	1,835 22	
" telegraph	76 07	
" U. S. mail service	5,809 19	
		$287,033 18

1318 Disbursements:

For pay-rolls	33,976 30	
For bills supplies	55,427 28	
" foreign tickets	11,135 51	
" advanced charges	19,596 96	
" grading, paving, and S. E. D.	396 70	
" right of way, W. D.	121 00	
" fencing	351 11	
" Chicago & NW. railroad	5,664 18	
" L. Ward, rec	1,165 80	
" Cleaveland judgment	15,000 00	
" cattle killed during Chamberlain's administration	300 00	
" city of Milw. bond, coupons	179 47	
" first mort'g bond, coupons	2,493 18	
" government tax on 1st m't'ge bond, coupons, paid Nov. '62	974 40	
Bal. cash on hand Dec. 31, '62	140,251 29	
		$287,033 18

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of December, 1862, according to his best information, knowledge, and belief.

H. CROCKER.

Subscribed and sworn to before me this 26th day of January, A. D. 1862.

W. L. WINSDALE,
Notary Public, Milwaukee Co., Wis.

Filed Jan. 27, 1863.

January report, 1863.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPARD KNAPP
vs.
THE LA CROSSE & MILWAUKEE R. R. and others.

CIRCUIT COURT OF THE U. S., *District of Wisconsin, ss:*

To the hon. judges of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of January, 1863.

H. CROCKER, *Receiver.*

1319 Receipts:

Balance cash Dec. 31, 1862	$140,251 29	
From freight	43,610 2x	
" passenger and foreign tickets	13,845 82	
" express and miscellaneous	1,781 0x	
" fire insurance	1,000 0x	

Disbursements:

For pay-rolls	25,700 00	
" bills supplies	5,051 82	
" foreign tickets	1,631 04	
" advanced charges	5,044 39	
" incumbrances, E. D.	123 57	
" L. Ward, receiver	1,167 05	

" Horicon railroad military ac't	60 68	
" Chicago & NW. railway	1,974 23	
" J. M. Kimball & Co	59 58	
" Charles Howard, judgment	1,000 00	
" first mort'g bond, coupons	876 27	
" city Milw. " "	158 22	
" government tax on pass. income, Sept	599 48	
" do. do. Oct	906 25	
" do. do. Nov	814 83	
" license to use patent right, Conway	800 00	
Balance cash on hand January 31, 1863	154,522 96	
	$200,488 38	$200,488 38

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of January, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this nineteenth day of February, A. D. 1863.

W. L. WINSDALE,
Notary Public, Mil. Co., Wis.

Filed Feb. 19, 1863.

February Report, 1863.

1,320. Circuit court of the U. S. for State of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPERD KNAPP,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD CO. *et al.*

To the hon. judges of said court:

I herewith submit my report, as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of February, 1863.

H. CROCKER, *Rec.*

Balance on hand, January 31, 1863		$154,522 96
Receipts:		
For freight		60,659 39
" passengers and foreign tickets		17,751 33
" express and miscellaneous		1,218 98
" telegraph		15 15
		234,167 81
Disbursements:		
For pay-rolls	$26,773 20	
" bills supplies	25,698 70	
" foreign tickets	5,465 39	
" advance charges	4,209 01	
" right of way, E. D	55 00	
" fencing	65 90	
" fire insurance	895 00	
" State tax, S. D. W., treas'r	16,425 70	
" Chicago and NW. r'y ac	1,662 40	
" government tax pass. earn'g, Dec	759 34	
" " " Jan., 63	673 54	
" first mortg. bond, coupons, Dec'r tax	62 40	
" " "	793 35	
" city Milwaukee "	1,089 08	
Balance on hand, Feb. 28, 1863	149,539 80	
		$234,167 81

STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker, being duly sworn, deposes and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of February, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 21st day of March, A. D. 1863.

W. L. HINSDALE,
Notary Public, Milwaukee Co., Wis.

[SEAL.]

Filed March 21, 1863.

March Report, 1863.

1,321. Circuit court of the U. S. for the State of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPERD KNAPP,
vs.
LA CROSSE & MILWAUKEE R. R. Co. and others.

To the hon. judges of said court:

I hereby submit my report, as receiver of the La Crosse and Milwaukee R. R., showing my receipts and disbursements for the month of March, 1863.

H. CROCKER, *Rec.*

Receipts:

Cash on hand, Feb. 28, 1863		$149,539 80
From freight		43,574 19
" pas'r and f'gn tickets		27,635 39
" ex'ss and miscellaneous		1,109 75
" trans. of troops		156 46
" telegraph		10 22
		222,025 81

Disbursements:

For pay-rolls	$26,135 70	
" bills supplies	24,668 39	
" f'gn ticket ac	5,150 16	
" advance charges	6,794 97	
" right of way, E. D	100 00	
" " W. D	100 00	
" fencing	30 00	
" J. M. Kimball & Co. ac	96 00	
" land grant m'tg	25,000 00	
" Chicago and NW. ry. ac	7,096 04	
" La Crosse and Minn. steam p'kt ac	1,511 03	
" fire insurance	116 32	
" 1st m'tg'e bond, coupons	350 50	
" city Milw "	8,691 38	
" legal expenses paid (city of Mil.)	600 00	
Bal. on hand, M'ch 31st	115,585 32	
		222,025 81

1322 STATE OF WISCONSIN, *Milwaukee Co., ss:*

H. Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of March, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 22d day of April, A. D. 1863.

W. L. WINSDALE,
Notary Public, Mil. Co., Wis.

Filed April 22, 1863.

April report, '63.

District court of the U. S. for the State of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPARD KNAPP
vs.
THE LA CROSSE and MILWAUKEE RAILROAD COMPANY.

To the hon. judge of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee R. R., showing my receipts and disbursements for the [month of] April, 1863.

H. CROCKER, *Receiver.*

Receipts:

Cash on hand April 1, '63		115,585 32
From freight		73,682 72
" pass. and f'gn ticket ac		29,545 28
" U. S. gov't transpt. of troops		5,844 14
" " " " mails		1,234 06
Express and miscellaneous		1,061 91
Telegraph		11 85
		$226,965 28

Disbursements:

For pay-rolls	29,405 58	
" bills supplies	36,059 05	
" advance ch'gs	17,034 49	
" foreign ticket ac	3,099 08	
" J. M. Kimball & Co. ac	104 00	
" gov't tax on coupons	313 58	
" " " pass. earn'gs	1,200 38	
" Ch'g and NW. r'y ac	7,363 22	
" Milw'ke and P. du C. r'y ac	704 40	
1323 For F. Vose ac., W. D., order court	8,394 14	
" 1st m'tg'e bond, coupons	472 17	
For city Milw'e do	1,425 82	
Cash on hand April 30, '63	121,389 37	
		$226,965 28

STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of April, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this nineteenth day of May, A. D. 1863.

W. L. WINSDALE,
Notary Public, Mil. Co., Wis.

Filed May 29, 1863.

May report, 1863.

District court U. States, State of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPARD KNAPP
vs.
THE LA CROSSE and MILWAUKEE RAILROAD COMPANY.

To the hon. judge of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of May, 1863.

H. CROCKER, *Rec'r.*

Receipts:

Cash on hand April 30, '63		121,389 37
From freight		135,680 20
" passengers and f'gn tickets		37,697 66
" U. S. Post Office Dept		132 47
" telegraph		18 29
" express and miscel		978 29
" Chicago NW. r'y ac		10,925 94
		$306,822 22

Disbursements:

For pay-rolls	34,643 40		
" bills supplies	28,716 32		
" foreign tickets	4,943 61		
1324 For advance charges	15,433 61		
" Chicago and NW. r'y ac	3,625 27		
For L. Ward, rec'r, ac	6,700 95		
" La. C. and Minn. S. P'kt Co. ac	514 58		
" patent rights	250 00		
" legal expense, W. div	2,716 69		
" 1st m'ge bond, coupons	28,891 32		
" Milw. city " "	187 44		
Cash on hand May 31	180,208 03		
			$306,822 22

STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of May, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 22d day of June, A. D. 1863.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Filed June 23, 1863.

June report, 1863.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
LA CROSSE and MILW. RAILROAD CO. and others. } *ss:*

To the hon. judge of the circuit court of the U. S. for the dist. of Wisconsin:

I herewith submit my report, as receiver of the La Crosse railroad, showing my receipts and disbursements for the month of June, 1863.

H. CROCKER, *Rec'r.*

Balance of cash on hand May 31, '63, as p'r report $180,208 03

Receipts:

Freight	$87,782 77		
Passengers and foreign ticket	23,338 98		
U. S. mails	45 44		
Telegraph	11 22		
La Crosse and Minn. Steam Packet Co	8,304 04		
1325 Chicago and Northwestern Railway Co	8,195 94		
Express and miscellaneous	90 47		
		127,768 86	
		$307,976 89	

Disbursements:

Pay-rolls		41,156 50
Bills supplies		21,376 25
Foreign ticket ac		4,038 86
Advances charges and freight refunded		47,344 64
Grading and paving in eastern division		739 27
Fencing		220 00
First mortgage bond, coupons	$5,393 92	
Milw. city do.	306 69	
		5,700 61
Government taxes on pass. income, April		885 60
Chicago & N. Western Railway Co		154 26
La Cross & Minn. Steam Packet Co		15,152 96
Lyndsey Ward, receiver		3,981 75
Milw. & St. Paul Railway Co		29,157 45
Cash on hand Juue 30, 1863		138,068 74
		307,976 89

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of June, 1863, according to his best information, knowledge, and belief.

H. CROCKER.

Subscribed and sworn to before me this 24th day of July, A. D. 1863.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Filed July 25, 1863.

July, 1863.—*Report.*

District court of the U. States for State of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPERD KNAPP
vs.
LA CROSSE & MILW. RAILROAD CO., &c.

To the hon. judge of said court:

I herewith submit my report, as receiver of the eastern division of the La Crosse & Milw. railroad, showing my receipts and disbursements for the month of July, 1863.

H. CROCKER, *Receiver.*

1326	Balance cash on hand June 30, '63		$138,068 74
	Receipts:		
	Freight on May and June ac	1,379 43	
	Passengers and foreign tickets do	3,356 71	
	Miscellaneous	228 38	
			4,964 52
			$143,033 26

Disbursements:

Pay-rolls on June ac	16,163 18	
Bills supplies	10,707 94	
Foreign ticket balances	3,404 71	
Freight earnings refunded	2,838 01	
Grading and paving east division	117 00	
Right of way do	442 25	
Chas. H. Roberts's order of court ac., land grant	700 00	
Legal expenses	74 56	
1st m'tg'e bond, coupons	1,992 49	
City of Milw. do	186 73	
Government taxes on pass. income, May	1,026 49	
Chicago and N. Western Railway Co	476 88	
Cash on hand July 31, 1863	104,903 02	
		143,033 26

STATE OF WISCONSIN, *Milw. County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the eastern division of the La Crosse & Miiw. railroad, for the month of July, 1853, according to his best knowledge, information, and belief.

H. CROCKER.

Sworn and subscribed to before me this 21st day of August, A. D. 1863.

W. L. HINSDALE,
Notary Public for Milw. Co., Wis.

Filed August 21, 1863.

1327 Whereupon a citation was duly issued bearing date on said 21st day of December, 1864, and filed on the 18th day of January, 1865, endorsed thereon as follows:

This citation duly served on the said Soutter & Knapp, by exhibiting the same to me and leaving a copy thereof with us this 18th day of January, 1865.

CARY & PRATT,
Solicitors for Soutter & Knapp.

1328 The United States of America to James T. Soutter and Shepherd Knapp, survivors of Greene C. Bronson, deceased, trustees, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December, A. D. 1865, pursuant to an appeal filed in the clerk's office of the circuit court for the ninth circuit and district of Wisconsin, wherein the Milwaukee and Minnesota Railroad Company is appellant and you are appellees, to show cause, if any there be, why the order of confirmation of sale and other orders subsequent to the 13th day of January, A. D. 1862, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the United States, this 31st day of December, A. D. 1864.

A. G. MILLER,
District Judge of the United States for the district of Wisconsin.

Filed: January 28, 1865.

SUPREME COURT OF THE UNITED STATES

No. [illegible]

JOHN R. McCLANE, PLAINTIFF IN ERROR

[illegible]

[illegible]

IN [illegible]

IN THE

Supreme Court of the U. S.

No. 159.—December Term, 1866.

MILWAUKEE & MINNESOTA R. R. CO.

vs.

JAMES P. SOUTTER.

BRIEF FOR THE APPELLANTS.

C. CUSHING,
Counsel of Appellants.

Joseph L. Pearson, Printer, 511 9th street.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1866.

MILWAUKEE & MINNESOTA RAILROAD CO.
vs.
JAMES P. SOUTTER.
No. 159.

Brief for the Appellants.

The Milwaukee and Minnesota R. R. Co. appeal in this case from the order of the District Court of Wisconsin, made on the 5th of May, 1863, confirming report of sale of the Western Division of the La Crosse and Milwaukee R. R., being the portion of the road running from Portage City to La Crosse, which the Milwaukee and St. Paul R. R. Co. claimed to have purchased.

The order of sale of the said Western Division was made by the Circuit Court of the United States for the State of Wisconsin, in this cause, on the 10th day of January, 1863.—(Transcript, p. 175.)

The said sale was reported by the marshal to have been made by him on the 25th day of April, 1863.—(Transcript, p. 193.)

The marshal's report of said sale was made by him to the District Court of the United States for the District

of Wisconsin, on the 27th day of April, 1863,—(Transcript, p. 192.)

Exceptions were filed to the said report of sale by the marshal, in the said District Court, on the 2d day of May, 1863, by the Milwaukee and Minnesota R. R. Co., and Lawrence G. Graham and Donald D. Scott, on this ground among others: that the marshal's report of sale should not have been made to the District Court, but to the Circuit Court, by order of which last mentioned court the marshal was directed to make the sale; the District Court on the day when said order of sale was made by the Circuit Court, to wit, on the 10th day of January, 1863, having no authority to order such sale.—(Transcript, p. 289.)

On the 5th day of May, 1863, the exceptions to the marshal's report of sale were overruled, in the said District Court, and the said sale was confirmed by said District Court, and the marshal directed to make a deed to the purchasers.—(Transcript, p. 296.)

It is proper to remark that the bill in this cause was filed in the District Court of the United States for the District of Wisconsin, on the 5th day of December, 1859, the circuit court system not being at the time extended to the State of Wisconsin, and the District Court having circuit court powers.

By the act of Congress of July the 15th, 1862, all circuit court powers hitherto conferred on district courts (which provision included the District Court of Wisconsin) were taken away from such district courts, and conferred on circuit courts, and the circuit system was extended to the State of Wisconsin.—(12 Stat. at Large, 576.)

By the subsequent statute of March the 3d, 1863, (12 Stat. at Large, 807,) it was enacted "that in all cases where the District Court had rendered final judgments or decrees prior to the passage of the act of July 15, 1862, said District Court shall have power to issue writs of exe-

cution or other final proceedings as may be in accordance with law, to enforce the judgments aforesaid."

Upon this state of facts, and in view of the acts of Congress of July 15, 1862, and March 3, 1863, above referred to, the question of law now arises, for the determination of this court, whether the order of the District Court of Wisconsin of the 5th of May, 1863, confirming the marshal's report of sale, is of any legal force. It is respectfully submitted that it is not.

1. It is proper to call attention to the important fact that the order of sale, under which the marshal proceeded, was made by the Circuit Court, and not by the District Court. If it was a valid sale, it was because the Circuit Court had jurisdiction of the subject-matter, and authority to make the order of sale. The act of confirmation of the sale by the District Court proceeds, necessarily, on the assumption that the order of sale was valid, tha is to say, that the Circuit Court had authority to make the order of sale. This being conceded, it would seem to follow, as a necessary consequence, that the report of sale by the marshal should have been made to the Circuit Court, and confirmation of the sale asked from the Circuit court. Making the report of sale to the District Court, and seeking confirmation from it, was one of the most irregular and anomalous proceedings which can well be conceived. The authority of the Circuit Court to make the order of sale, being recognized by the District Court, as it must necessarily have been, in the very effort to confirm it, it would seem to follow, as a legal consequence, that the whole matter of the sale, including its confirmation, belonged to the Circuit Court, and was a subject with which the District Court had no concern, and over which it had no authority. The circuit and the district courts are not courts of concurrent jurisdiction. Each moves within a sphere prescribed by the laws of Congress. The act of the district judge admitted that the Circuit Court

had authority to order the sale, and this authority of the Circuit Court being admitted, it followed that the District Court was ousted of all jurisdiction in the matter, as both courts could not have jurisdiction of the same subject-matter. The act of the District Court in attempting to confirm the sale was simply null and void for want of authority.

2. The general question of law involved in the case has already been passed upon by the Supreme Court in Bronson vs. Railroad, (1 Wallace, 405,) where it was held—

"1. That the District Court acquired (under the act of March 3, 1863,) only such powers as might be necessary to insure the execution of any final process which it might issue; that is to say, such powers as might be necessary to regulate and control its officers in the execution of their ministerial duties.

"2. That the words 'judgments and decrees,' within the meaning of this act, were such judgments and decrees as disposed of the whole case, so that nothing remained to be done but to issue 'final process.' "

This adjudication would seem to be conclusive of the question raised in this case.

3. The point decided by the Supreme Court in Bronson vs. Railroad, (1 Wallace, 405,) is that if anything remained to be done in the cause, involving judicial judgment, the case goes to the Circuit Court.

In Blossom vs. Railroad, (1 Wallace, 655,) it is held that confirmation of a sale is an act involving judicial judgment, from which a party may appeal to this court.

If there had been nothing else in the case than the question of confirming the marshal's sale, this question alone would have taken the case to the Circuit Court; but the reserved exceptions in regard to Chamberlain's claim were pending matters of litigation, which took the case

to the Circuit Court. And the Circuit Court in possession of the cause for any purpose had possession of it for all purposes.

4. According to the decision in Bronson vs. Railroad, the District Court could only enforce decrees already made. It could not make new adjudications of the rights of the parties.

The confirmation of the marshal's sale was a new adjudication, which it had no authority to make.

5. By the act of July 15, 1862, all cases cognizable in the circuit courts were withdrawn from the district courts. This act entirely withdrew from the District Court of Wisconsin any jurisdiction over this cause.

Attempt is made to sustain its jurisdiction in regard to the particular matter now under consideration by the subsequent act of March 23, 1863. But the only power conferred by this last-mentioned act is in cases where the district courts "had rendered final judgments or decrees" prior to the passage of the act of July 15, 1862; in which event they are authorized to issue "writs of execution, or other final process," or to "use such other powers and proceedings, as may be in accordance with law, to enforce the judgments and decrees aforesaid."

Unless the order confirming the marshal's sale in this case is "a writ of execution, or other final process," or some process to enforce the "final decree" in the cause, it is without authority. Clearly it is nothing of this kind. Therefore it is an exercise of power without authority of law.

C. CUSHING,
Counsel of Appellants.

Supreme Court of the United States.

No. 159, December Term, 1866.

THE MILWAUKEE & MINNESOTA RAILROAD COMPANY

vs.

JAS. T. SOUTTER & SHEPHERD KNAPP, Survivor of GREENE C. BRONSON, Deceased.

Brief for the Appellant.

HENRY A CRAM, Counsel of Appellants.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS,
1867.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1866.

MILWAUKEE & MINNESOTA RAILROAD COMPANY, APPELLANT,

vs.

JAMES T. SOUTTER & SHEPHERD KNAPP, SURVIVORS OF GREENE C. BRONSON, DECEASED.

No. 159.

BRIEF FOR APPELLANT.

I.

This is an appeal from the confirmation of sale of the Western Division of the La Crosse & Milwaukee Railroad, under the Land Grant Mortgage.

The bill to foreclose this mortgage was filed in the *District* Court of Wisconsin on the 8th of December, 1859, the Circuit Court system not at that time existing in Wisconsin, but the District Court having the jurisdiction of a Circuit Court.

An order of reference to compute the amount due, and to make various enquiries in regard to the merits of the case and the amount of the claims of the defendant, Selah Chamberlain, was made March 11, 1861. (*Transcript*, *p.* 112.)

The Masters made their report on this order October 7, 1861. (*Transcript*, *p.* 115.

On the 1st of May, 1863, Crawshay and Oddie filed exceptions to the report, (*Transcript*, *p.* 284,*) on the 2d of May, 1863, Helfenstein a mortgagee, filed exceptions, (*Transcript*, *p.* 288,*) and on the same day, the Minnesota & Milwaukee Railroad Company, and Graham & Scott filed exceptions, (*Transcript*, *p.* 289,*) and on the 4th of May, 1863, Howard, Graham & Scott filed exceptions, (*Transcript*, *p.* 295.*) All these exceptions were filed in the District Court, and the Minnesota Company, as its first exception, objected to the jurisdiction of the Court, and that the marshal's report should have been made to the Circuit Court. (*Transcript*, *p.* 289.*)

On the 5th of May, 1863, the District Court overruled all these exceptions, and confirmed the sale, and directed the marshal to make a deed to the purchaser. (*Transcript*, *p.* 296.*)

On the 6th of May, 1863, the St. Paul Company, who were the actual purchasers, presented a petition to be put in possession of the whole road and all the rolling stock, not only what it had acquired under the decree, but that belonging to the Eastern Division, and which the record shows was in this case decided to be subject to the lien of the mortgages on that division. (*Transcript*, *p.* 297.*) The District Court afterwards made an order, granting this petition, the Milwaukee & Minnesota Company protesting against the jurisdiction of the District Court to hear such a petition. (*Transcript*, *pp.* 301,* 303*–312.*)

On the 23d of June, 1863, Crawshay and others apply to the Circuit to compel the marshal to report the sale to the Circuit Court. (*Transcript*, *p.* 303.*) The application was denied. (*Transcript*, *p.* 315*)

September 26, 1864, Alexander Fleming, as a bondholder, make a like application to the Circuit Court with the same result. (*Transcript*, *pp.* 315*–328.*)

October 7, 1864, the Milwaukee & Minnesota Railroad Company make the like application to the Circuit Court. (*Transcript*, *p.* 328.*)

On the 18th of January, 1865, the Milwaukee & Minnesota Company appealed to the Supreme Court from the order of the District Court confirming the sale.

It is submitted that the District Court had no authority to make the order confirming the sale; that the order was illegal for want of jurisdiction.

The attention of the parties and the District Court was called to the objection before the order was made by the exceptions of the Milwaukee & Minnesota Company, and the objection was constantly brought forward and pressed in a variety of forms.

The Minnesota Company has a very manifest interest in having the order reversed, being the owner of the equity of redemption, having made many exceptions to the validity of the sale, which it has never had an opportunity of presenting, and having passed on by the only tribunal having jurisdiction to pass upon them, and, moreover, having by the Statutes of Wisconsin a right of redemption for one year after a valid sale.

The sale was made in pursuance of an order of the Circuit Court; the validity of the sale, therefore, and of the order confirming it, depend upon the question whether the Circuit Court had jurisdiction. If the Circuit Court had jurisdiction, the marshal should have reported the sale to the Circuit Court, and the question of the confirmation should have been passed on by that Court.

The *exclusive* jurisdiction of the Circuit to make the order for the resale, to receive the marshal's report and any exceptions to the sale, and to confirm the sale, appears clearly from the plain words of the act of Congress of July 15, 1862, and the necessary construction of that act by this Court, in Bronson *vs.* Railroad, 1 Wallace, 405, and the previous decision of the Court there referred.

But it will be claimed that the act of Congress of March 3, 1863, restored the jurisdiction of the District Court to the extent necessary to enable them to make the order in question, and this claim is really the only question in this case.

The answer to this claim is, that this act had no such

effect, and this Court, in Bronson *vs.* Railroad, 1 Wallace, 408, so decided.

The Court in the last mentioned case held—

1. That the District Court acquired (under the act of March 3, 1863,) only power to issue final process and such powers as might be necessary to insure the execution of any final process which it might issue; that is to say, such powers as might be necessary to regulate and control its officers in the execution of their ministerial duties in relation to such final process, but no judicial power to pass upon the rights of parties in any other respect, and that if other powers beyond the enforcement of the ministerial duties of the officers in execution of final process become necessary, recourse must be had to the jurisdiction of the Circuit Court.

2. That the words "judgments and decrees" used in the act mean such judgments and decrees as dispose of the whole case, so that nothing remained to be done but to issue final process.

It would have been difficult to have arrived at any other conclusion, in view of the difficulty proposed to be remedied and the careful language of the act: "power to *issue writs of execution* or other *final process,* or to use such other powers and proceedings as may be in accordance with law to *enforce* the judgments and decrees aforesaid," viz: final judgments and decrees.

The jurisdiction is, therefore, limited first to such final decrees or judgments on which no single thing remains to be done but to issue final process; next the process in reference to which the jurisdiction was to be exercised, was to be writs of execution or other final process, the word "or" meaning of a like nature with writs of execution, and the word final powers itself having this exact meaning; and finally the jurisdiction to be exercised, was solely the control of officers of the Court in the execution of such final process.

Neither of these three necessary elements of jurisdiction were present in this case.

First. This was not such a final decree, because—

a. The important claim of Chaimberlain has never been

passed on, it has been expressly reserved by the Court, and the right remains to Chaimberlain to have it passed on.

b. The decree expressly provides that after the sale the case should come before the Court again to have the sale approved of, the provision being in accordance with the well settled practice of Equity Courts both in England and this country.

c. The marshal is directed to bring the proceeds of sale into Court for distribution between the bond-holders and other lien creditors.

d. It contained a provision for further proceedings in case of a future default of payment of interest.

In 2 Black, 531, this Court decided that the decree of foreclosure on the Eastern Division, which is exactly like the one in this case, although a final one within the meaning of the act of Congress regulating appeals, was not "final in the strict technical sense, for something yet remains for the Court below to do."

Second. No execution or final process within the meaning of the act ever has issued or ever will issue. The words final process and execution used in the act are terms well defined and having a clear definitive meaning. They mean writs issuing from the Court as a matter of right, and without the exercise of judicial action or discretion as a necessary incident of the judgment or decree, and for the purpose of enforcing the same. On this decree, the only possible writ to enforce the decree that could be issued would be a writ of assistance to put the purchaser in possession, and such a writ is not within the act, because it is not an execution or final process, and because it cannot be issued without an application to the Court. It is, however, a matter of no consequence whether such a writ is within the act, because no such writ has ever been issued or required. The decree does not provide for any execution to collect any deficiency, and that no such writ can issue, see Noonan *vs.* Lee, 2 Black, 499, and Orchard *vs.* Hughes, 1 Wallace, 77.

This decree needed no final process for its enforcement; it executed itself, through the instrumentality of the marshal,

by virtue of the provisions contained in it. The Court might have named any unofficial person to conduct the sale.

Third. The Court, in confirming the sale, was not controlling and regulating the conduct of one of its officers in the execution of final process, but was judicially passing upon the rights of parties in a case where no final process had issued or would issue.

In Blossom *vs.* Railroad, 1 Wallace, 655, the Court held that the confirmation of a sale is a judical act, involving judicial judgment, from which a party may appeal to this Court.

II.

The appeal of the Minnesota R. R. Co. is also from the orders of 7th May, 1863, (*Transcript*, *p.* 300,*) and of 12th June, 1863, (*Transcript*, *p.* 303,*) granted by the *District* Court, giving possession of the rolling stock to the St. Paul Company—

1. These orders are erroneous for want of jurisdiction in the District Court, for the reasons mentioned above.

2. This Court decided the order of the 12th June, 1863, in the Eastern Division case, to be absolutely void.

Bronson *vs.* Railroad, (1 Wall., 405.)

3. The District Judge, in April, 1864, delivered an opinion, in which he says: that the order of the District Court of the 12th of June, 1863, under the decision of the Supreme Court, is to be considered of no validity, and that it is his duty to order it rescinded, and he directs it to be rescinded, and the Eastern Division and its appurtenances to be restored to the receiver under his original appointment.

The Circuit Judge at the same time delivered an opinion in which he declares that the orders were usurpations of authority.

4. An order was entered in the Eastern Division suit, rescinding the order in that cause of the 12th of June, 1863, putting the Eastern Division and its appurtenances into the hands of St. Paul Company. (*See Transcript of Record*, *No.* 416, *December* T., 1866, *p.* 393.

HENRY A. CRAM,
of Counsel for Appellants.

Supreme Court

OF THE UNITED STATES.

No 159

THE MILWAUKEE & MINNESOTA RAILROAD COMPANY,

Appellants.

vs.

JAMES T. SOUTTER AND SHEPHERD KNAPP, Survivors of Greene C. Bronson, Deceased.

Appellees.

JAMES T. SOUTTER AND SHEPHERD KNAPP, Survivors of Greene C. Bronson, Deceased.

Appellants.

vs

THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, and others.

Appellees.

JOHN W. CARY,

Of Counsel for Soutter & Knapp, for Complainants.

Supreme Court,

OF THE UNITED STATES.

THE MILWAUKEE & MINNESOTA RAILROAD COMPANY. *Aypellants.* *vs* JAMES T. SOUTTER AND SHEPHERD KNAPP, Survivors of Greene C. Bronson, Deceased. *Appellees.*	No. 159. Dec. Term, 186[illegible]
JAMES T. SOUTTER, AND SHEPHERD KNAPP, Survivors of Greene Bronson, Deceased. *Appellants.* *vs* THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, and others. *Appellees.*	No. 203, Dec. Term, 186[illegible]

Both these appeals are in the Land Grant foreclosure suit, relating to the Western Division of the La Crosse & Milwaukee Railroad. Record No. 203 is a mere con-

tinuation of Record 159, and contains nothing of importance except the appeal papers in that case. The record No. 159 contains all the proceedings which are sought to be reviewed in both appeals and both appeals, have reference to the rolling stock.

The appeal of the Minnesota Company is from the order of confirmation of the Marshal's sale made May 5th, 1863, and from the orders of May 7th and June 12th, 1863, giving the Milwaukee & St. Paul Railway Company possession of the mortgaged property under the purchase.

RECORD PAGE 329. *

The bill of complaint was taken as confessed by the Minnesota Company, and no answer of that Company was ever filed and its first appearance either in its own name or by any of its stockholders for it, was after the final decree, to-wit: On the 8th day of May, 1862, when A. Fleming, as a stockholdher and the Minnesota Company by Mr. Carpenter, appeared and filed separate petitions to have the sale postponed, Record pages 5th * to 35th, * and pages 46 * and 47.*

The appeal of Soutter & Knapp is from the report of the Masters and the decree thereon, relative to the rolling stock. It was taken after the decision of this court in the case of the Minnesota Company vs. the St. Paul Company, reported in 2 Wallace, 609, with a view of having the construction of this court of the decree in that case, and if erroneous so far as the rolling stock is concerned that it might be modified.

In my statement of the facts of the record, I shall endeavor to state or refer to every part of it having a bearing upon this question of rolling stock, but omitting entirely the vast mass of other matters which have no bearing on the points in issue.

The bill of complaint in this cause was filed December 5th 1859, by Bronson, Soutter & Knapp to foreclose the

Land Grand Mortgage. This mortgage covered the line of the La Crosse & Milwaukee Railroad from Portage City to La Crosse, a distance of 105 miles. It also covered the line from Madison by way of Portage City to St. Croix, which the La Crosse & Milwaukee Railroad Company was authorized to build and the lands granted by Congress to the State of Wisconsin. These lines were common or identical for 61 miles from Portage City west to Tomah. No part of the road from Madison to St. Croix was ever built except this 61 miles which was common to that and to the road from Milwaukee to La Crosse which was built and fully completed, being 200 miles in length.

RECORD PAGES 1 TO 21.

The only road built was the original line from Milwaukee to La Crosse. The Grant in the mortgage is in the words and figures following, to-wit:

"*Now, therefore, this Deed Witnesseth*, That the said Railroad Company, in consideration of the premises, and of the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, convey and confirm unto said parties of the second part, all and singular, the several tracts, pieces or parcels of land which now are, or may hereafter be, or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may hereafter constitute or be a part of the roads of said Railroad Company from Madison, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five ard thirty-one, and from Portage City to La Crosse; and also, all and singular the superstructure of said roads, whether now made, or to be made hereafter, and all the engine-houses, workshops, depots and other buildings, and all other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter. And also, all and singular the locomotive engines and other rolling stock, and all the other equipmants of every kind and description, which

have already been, or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils and other personal property, which have been, or may hereafter be procured for or used in connection with said roads, or either of them; and also, all and singular the rights, liberties, privileges, and franchises of said Railroad Company, of every kind and description, relating to said roads.

"*And furthermore*, and upon the consideration aforesaid, the said Railroad Company has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and confirm unto said parties of the second part, all and singular the lands granted or intended to be granted to said Railroad Company, under or by virtue of the act of Congress and the act of the Legislature of Wisconsin, hereinbefore mentioned, so far as the said lands pertain, or are applicable to the construction of the said roads from Madison, by way of Portage City, to the St. Croix River or Lake, estimated to be about one million acres of land. Together with all and singular the hereditaments and appurtenances belonging, or in any wise appertaining, to the lands and real estate hereby conveyed, or intended to be conveyed; and it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part, all the property, real and personal, of said Railroad Company to be acquired hereafter as well as that which has already been acquired, together with all the rights, liberties, privileges and franchises of said Railroad Company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing acts of Congress and the Legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix River or Lake, had already been designated and conveyed to said Railroad Company."

RECORD PAGES 11 AND 12.

Helfenstein answered the bill March 5th, 1860, admitting most of the allegations of the bill and setting up that bonds had been issued under the mortgage given to Bron

son, Soutter & Knapp after the execution of a mortgage to him by the La Crosse Company; and that the bonds issued under the mortgage to him were issued and sold prior to the sale of a portion of the bonds issued under the mortgage to Bronson, Soutter & Knapp, and to that extent claiming a priority for his bonds. The facts of that answer are not material to the questions now before the court.—Record Pages 24 to 37.

On the 3d day of April Chamberlain, answered denying that the mortgage to Bronson, Soutter & Knapp was a lien on the mortgaged premises for the reason that the road was not then built, and also setting up the indebtedness to him of the La Crosse Company and his rights under his lease and judgments. The matter of his answer is not material to the issue now before the court.—Record Pages 37 to 40.

Several bondholders under the mortgage in this cause, so given to Bronson, Soutter & Knapp, filed petitions to be made parties defendent, and by order of the court the bill was amended making them parties and they severally answered claiming that the bonds numbered from 1 to 2500, both inclusive, should have a priority of lien over the residue of the bonds issued under the same mortgage. The Record from page 41 to 107 contains these proceedings and also the order appointing a Receiver and his reports. These proceedings have no bearing upon the points in issue on this appeal and need not be further noticed. The bill of complaint was taken as confessed by all the defendants except Chamberlain, Helfestein and these bondholders.

RECORD PAGE 111.

The cause was heard by the District Court on pleadings and proofs February 5th and 6th, 1861, and taken under advisement.

RECORD PAGES 107 AND 108.

There were no proofs on the hearing relating to the roll-

ing stock, except the original mortgage to complainants, bearing date December 31st, 1856, (Record page 137 to 143,) and a supplemental mortgage, given to Bronson, Soutter & Knapp, under the covenants for further assurance contained in said original mortgage, which was executed on the 4th of September, 1857, and recorded September 5th, 1857. At the time of giving this supplementary mortgage, all the rolling stock that was ever purchased by the La Crosse Company, (except that purchased and paid for by the Receiver,) had been purchased and was then on the road.

RECORD PAGE 272.

This supplemental mortgarge is found on pages 143 to 145 of record and is as follows:

"This indenture made and entered into this 4th day of September in the year of our Lord, one thousand eight hundred and fifty-seven, between the La Crosse and Milwaukee Railroa Company, a corporation created by the Legislature of the State of Wisconsin, parties of the first part, and Greene C. Bronson James T. Soutter and Shepherd Knapp trustees, all of the City and State of New York, parties of the second part.

"Whereas the said parties of the first part did on the 31st day of December in the year one thousand eight hundred and fifty-six duly execute and deliver to the said parties of the second part as trustees, a deed of trust, bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain monies which the said party of the first part had determined to borrow, stipulated and provided for the issue of the bonds of the said La Crosse & Milwaukee Railroad Company, for ten millions of dollars of the date, tenor and description in the said deed of trust; particularly set forth and payable principal and interest as therein provided, and whereas the said Railroad Company in and by the said deed of trust granted, bargained, sold, conveyed and confirmed unto the said parties of the second part all and singular the several tracts of and which then was or thereafter might be or constitute the site

of the roadway, turnouts, engine-houses, workshops, depots and other building of the said Company and other lands, buildings and estate and property, real and personal and mixed therein specially and particularly described, which conveyance was in and by the said deed of trust, declared to be and was made to the said parties of the second part, and the survivors and survivor, successors and successor of them and their and his heirs and assigns in trust and upon the trusts, terms and conditions therein particularly expressed.

"And whereas the said parties of the first part did, in and by the said deed of trust, covenant and agree to and with the said trustees, the said parties of the second part, that the said Railroad Company would from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to the said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might be either necessary and proper for more effectually vesting in the said trustees all such right, title interest or estates, both legal and equitable, as said Railroad Company then had or might thereafter acquire of, in and to all and every part of the property thereby conveyed, or intended to be conveyed.

"And whereas the said Railroad Company had, at the time of the execution of the said deed of trust, or have since acquired certain property which was conveyed or intended to be conveyed thereby, and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title right, interest and estate, legal or equitable, which the said Company then had or have since acquired therein.

"Now, therefore, know all men by these presents, that the said parties of the first part, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises, and of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part all and singular about eleven thousand tons of iron rails, being all the iron rails

purchased for and belonging to the Company, and lying at Milwaukee and elsewhere along the line of the road of the said Company, or wherever the same or any portion thereof, may be and not actually laid down in the track thereof, all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said Company wherever the same may be.

"To have and to hold all and singular the property hereby conveyed or intended to be conveyed to the said parties of the second part, and the survivors or survivor of them, their successors or successor, and their and his heirs and assigns, upon the like trust terms, trusts and conditions as are in the said deed of trust contained, and all the power and authority granted to the said parties of the second part, in and by the said deed of trust, in relation to the property conveyed thereby, and in relation to the sale, conveyance and disposal thereof, and in relation to the disposition and application of the proceeds of such property in case of sale, are hereby conferred upon, granted to, and vested in the said parties of the second part, in relation to the property hereby conveyed, as fully and effectually as if the property hereby conveyed, had constituted a part of the roadway of the said Company, described in the said deed of trust, at the date thereof.

"And the said parties of the second part are hereby charged with all the duties in relation to the property hereby conveyed and the sale and disposition thereof, and of the proceeds thereof in case of sale thereof with which they are charged in relation to the property conveyed or intended to be conveyed by the deed of trust; and the said parties of the second part may, and they are hereby authorized and required to treat the property hereby conveyed in the same manner, and to hold the same upon the same terms, trusts and conditions, and for the same purposes as the property mentioned in the said deed of trust, and not otherwise, and may take possession thereof, and sell and dispose of the same in the same manner, at the same time, and upon the same conditions, as they may take possession of and sell and dispose of the property in the said deed of trust mentioned, and as a part thereof, and not otherwise; and it is hereby declared to be the object

and intention of these presents and of the parties hereto to subject the property hereby conveyed, or intended to be conveyed, and every part thereof, to the operation of said deed of trust, and each and every stipulation and covenant therein contained as fully and effectually to all intents and purposes as if the said property hereby conveyed or intended to be conveyed had at the time of execution of the said deed of trust constituted a part of the property thereby conveyed, and had then been embraced in and conveyed theyeby,

In witness whereof, &c."

There was no testimony whatever to show the rolling stock of the La Crosse Railroad belonged to one portion of the road as against the other, or that it had ever been assigned to one portion or that there was any separate funds out of which it had been purchased.

The questions litigated on the hearing and to which the proofs were principally directed were—1st, Whether the first 2500 bonds issued under the complainants mortgage had a priority of lien over the last 1500.

2d.—The claims of priority of the Helfenstein bonds over the bonds issued under the complainant's mortgage subsequent to the issue of the Helfenstein bonds.

3d.—The amount that should be allowed or that was equitably due on the land grant bonds in consequence of the low price at which they were sold.

4th.—Whether it was competent for the La Crosse Company to make a valid mortgage of a contemplated line of road before any part thereof had been acquired or built, and whether, as matter of fact, any portion of this road had been built or partially built when this land grant mortgage was made.

And 5th.—The claims, rights and liens of Chamberlain under his lease and contracts for building the road.

All the testimony read on the hearing, unless I except the mortgage itself and said supplemental mortgage, was directed to one or the other of the points above stated.

And except also that Selah Chamberlain who was a lessee of the premises and who by a modification of his lease, Record 265, had agreed to account to the bondholders under his mortgage for the net earnings of that portion of the road covered by this mortgage, introduced some evidence tending to show that there had been no net earnings of that part of the road.

Prior to October 18th, 1856 there was no statute law in Wisconsin making rolling stock of a railroad a fixture. On that day an act was passed containing the following provisions:

SESSION LAWS OF 1856, PAGES 215 AND 216.

"SEC. 2.—All rolling stock of any railroad company used and employed in connection with its railroad, shall be and the same are hereby declared to be fixtures, and all such property, and all such additional right of way, depot grounds and other real property acquired subsequently to the execution of any such trust deed or mortgage, upon the property therein described, to which such Company had title at the time of the executions. * *

"SEC. 4.—That all mortgages or trust deeds heretofore executed by any railroad Company, are hereby declared to be included within, and subject to the provisions of this act as fully and effectually as if its provisions had been incorporated in its charter, prior to, and at the time of the execution of such mortgages or trust deeds; *Provided, however*, That such railroad company shall first accept of the provisions of this act by a resolution of its Board of Directors, and shall cause a copy thereof, under the certificate of its Secretary, with the corporate seal thereof attached thereto, to be filed in the office of the Secretary of State; *And provided further*, That that section shall not be construed in anywise to affect any liens acquired by any person or persons, corporation or body politic, upon such subsequently acquired property, at any time after the execution of such mortgage, and prior to the filing the acceptance of the provisions of this act as above provided, in the office of Secretary of State."

The La Crosse Railroad never took any action as provided by this act to make its provisions applicable to the

prior mortgages on this Railroad. And this Land Grant Mortgage given to the complainants was the first mortgage given by that Company after the statute took effect. And the Supreme Court of the State of Wisconsin in the case of the Commercial Bank vs Farmer's Loan and Trust Company, 11 Wis., 207, and Hill et al vs La Crosse Railroad 16 Wis., 214, had strongly intimated, and in fact held that aside from the statute they would hold rolling stock to be personal property and not held by a real estate mortgage. Under these circumstances the complainant's counsel, on the hearing claimed that this mortgage was a first lien upon all the rolling stock which had been procured for or used on this road; which included all the rolling stock of the said La Crosse Railroad Company.

The District Judge on the hearing took the case under advisement until the 11th day of March, when he read in open court a written opinion upon all the points raised, so much thereof as relates to the rolling stock is in the following words to-wit:

Extract from the Judge's Opinion:

The legislation of this State was evidently with the view of enabling railroad companies, and especially the La Crosse & Milwaukee Railroad Company, to raise money in advance, by bonds and mortgage, for the purpose of building their road and procuring rolling stock. The Directors of this Company were given almost unlimited license to make bonds and mortgages, payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgages, the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity those pledges should be sustained, and the persons who purchased the Company's bonds and furnished the means of the procurement of the stock should be protected.—And they also furnished the means for building the road, from which revenues have been derived to enable the Company to procure rolling stock.

"From the best consideration I can give the snbject, I think the rolling stock on the whole road is to be considered a fixture, and is pledged to the first mortgage of nine hundred and fifty thousand dollars, unless it can be shown affirmatively how much or what portion was procured by funds received out of the issue of land grant bonds,and the second morgage bonds,or either of them So much of the stock as can be shown to have been procured out of either of those issues, or out of the revenues of so much of the road as was built with funds arising out of those issues of bonds, respectively, will pass with the sales on said mortgages. The first mortgage is a lien on the road and fixtures from Milwaukee to Portage City. It was the first pledge of the rood and fixtures to creditors. And I apprehond it is the conveyance of the franchise of the corporation granted by its charter, as it is not probable that the corporation could divide its franchise by making mortgages of several parcels of the road property.—That would be creating several corporations by deed of a Company, to which the Legislature granted but one."

On delivering this opinion the Court made a reference of the matter to certain masters in the words and figures following.—Record, page 112:

"This day came the parties, by their counsel, and on consideration of the pleadings, proofs and the argumedts of counsel, it is ordered by the court that reference be, and hereby is, made to Winfield Smith, a master, and to Jerome R. Brigham and Joshua Hathaway, special masters, to ascertain and report the amount of interest due and unpaid on the bonds described in the mortgage or deed of trust, and the real amount of said bonds.

"And the said masters shall ascertain and report the amounts of the several judgments of Newcomb Cleveland, Sebre Howard, and of Graham and Scott.

"And it is farther ordered that the said master report the amount of the several specific claims of Selah Chamberlain, and also an account of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its division by the mortgages.—And that they may examine the said Chamberlain under oath,

and require him to produce his books, and they may also take additional testimony to that on file.

"And it is farther ordered that the said masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by and is included in this mortgage. And also in the first and second mortgages, respectively.

"March 21, 1861.—Ordered by the judge that Increase A. Lapham be, and hereby is, appointed a special master in this case, in the place of Joshua Hathaway, who declined serving."

The testimony taken by these masters is contained in the record, from page 270 to 428. The whole of this testimony excepting one deposition of E. H. Goodrich, found on pages 270 to 272, relates exclusively to the claims of Selah Chamberlain, and has no relation to, or bearing upon the question now before the court.

(This reference was made in this cause, and also in the Eastern Division case of Bronson & Soutter, and the testimony and report appears in both cases.)

The deposition of Goodrich, on pages 270 and 271 relates to a question raised by Sebre Howard, relating to the depot grounds, and has no reference to the matters now in issue. A portion of that deposition on page 272 relates to the rolling stock, and is the only testimony taken by said masters on that subject.

That portion of the deposition relating to that subject, is as follows:

"At the date of the first mortgage there was no rolling stock on hand, June 30th, 1854. At the date of the mortgage to Bronson & Soutter—August 17, 1857, the cost of the rolling stock on hand was $544,492,16.

"At the date of the land grant mortgage, 31st December, 1853, the rolling stock on hand cost $455,001,06.

"At the date of the order of reference in these causes (11th March, 1861,) the cost of the rolling stock on hand was $623,235,78.

"None of the rolling stock was purchased with land grant bonds, but part of it was paid for with proceeds of the land grant bonds. Out of the proceeds of those bonds (issued under the mortgage to Bronson, Soutter & Knapp,) three thousand dollars was paid for the right to use a car brake, and thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, were paid for forty box cars the entire amount of rolling stock is about all on hand at this time, scarcely any having been destroyed.

"The whole sum paid for rolling stock out of the earnings of the road since 31st December, 1858, is $78,743.62 besides some small sums for transportation of rolling stock. Besides that, payments have been made out of the general earnings of the road for building rolling stock in the company's shops, on the eastern division of the road, as per report of the receiver made December 31st, 1860.

The masters filed their report October 7th, 1861, on the several matters referred to them.

RECORD, pages 115 118.

So much of said report as relates to the rolling stock, is found on page 118, and is as follows:

We have also ascertained the whole amount of rolling stock on the whole road at the cost price. The amount thereof was, at the date of the filing of the bill of complaint in this cause, five hundred sixty-nine thousand six hundred thirty-five dollars and seventy-eight cents, and an additionol amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount $623,235 78.

And we have ascertained, and do further report, that of the said rolling stock, forty box-cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 246, 348, 350, 352, 354, 256, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage executed to the complainants as set forth in the bill of complaint in this cause, the said cars having been purchased, out of the proceeds

of a portion of the bonds to which this mortgage is collateral, and all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the seventeenth day of August, A. D. 1857.

In ascertaining the facts and amounts, and in making the computations herein above contained and referred to, we have been guided by the opinions and instruction of this court communicated to us in connection with the said order of reference.

All which is respectfully submitted.

Dated Milwaukee, 1st September, 1861.

WINFIELD SMITH,
JEROME R. BRIGHAM,
I. A. LAPHAM

Filed Oct. 7, 1861.

To this report the complainant filed several exceptions, but the only one material was the fourth exception, Record p. 133, and is in the words and figures following, to-wit:

"4th. For that the said master and special masters have in and by their said report certified that all the rolling stock on said road (except 40 box-cars which are specially named in said report) was covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Brownson and James T. Soutter, and bearing date on the 17th day of August, A. D. 1857.

Whereas the said master and special masters ought to have certified that all the rolling stock on said road (except that purchased by the receiver since the commencement of this suit, amounting to the sum of $53,600) was covered by and included in the mortgage given to the said complainants, and described in the bill of complaint in this cause, and that said mortgage was a first and prior lien on said rolling stock, superior to all other liens; and that as to the rolling stock purchased by said receiver above mentioned, one hundred and five two hundredths thereof was covered by the mortgage described in the complaint,

and that to that extent the complainants' said mortgage was a first lien thereon.

Wherefore said complainants except to the said master and special masters' said report, and appeal therefrom to the judgment of this honorable court."

Afterwards, on the 7th of January, 1862, the following order was made on said exception. Record p. 136.

"This day came the parties, by their counsel, and on consideration of the several exceptions to the report of the masters, and the arguments of counsel, it is ordered by the court that the first, second and third exceptions of complainants to said report be, and hereby are, overruled.

And it is further ordered by the court that the fourth exception of complainants be, and is hereby overruled as to the forty box-cars which are covered by this mortgage. And it is further ordered by the court that on said exception the said report be so modified that all the other rolling stock that was on said road when the receiver was appointed, except the said forty box-cars, is covered by and included in the first mortgage of the road from Milwaukee to Portage City; and that all the rolling stock on said road that has been purchased or procured since the court has held possession by its receiver, costing $147,943 62, be applied to the said first mortgage, and the mortgage in this bill, in proportion to the net revenues on such portions of the road said mortgages respectively coverod, since the appointment of the receiver.

At the time of making this order the District Judge read in open court a written opinion disposing of the several matters raised by the several exceptions, and so much thereof as relates to the question at issue is as follows:

Extract from Opinion of the Judge on hearing exceptions and directing entry of final decree:

"In obedience to the order of reference, the masters inquired into the quantity of rolling stock covered by this mortgage. They report that forty box cars, costing thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, giving their respective numbers, were purchased with funds raised on the bonds of this mortgage. They also report that the rolling stock on the road

cost $623,235.78, and that all but those box cars are covered by the first and second mortgages. The complainants except to this part of the report, and claim the whole rolling stock. They found their claims upon the grounds that the rolling stock is personal property, and that the first mortgage was not filed as a chattel mortgage, and is therefore void as to the rolling stock. And that their mortgage was the first in date, after the act of October 10, 1856, declaring rolling stock to be real property. I do not think the statute for filing chattel mortgages is applicable to this species of property in actual use upon a railroad.

"The legislation of this state was evidently with a view of enabling railroad companies, and especially the La Crosse & Milwaukee Railroad Company, to raise money in advance, by bond or mortgage, for the purpose of building their railroad and procuring the rolling stock. The Directors of this Company were given almost unlimited license to make bond and mortgage payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgage, the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity, those pledges should be sustained, and the persons who purchased the Company's bonds and furnished the means for the procurement of the stock should be protected. And they also furnished the means for building the road, from which revenues have been derived, to enable the Company to procure rolling stock This matter is fully settled as authority to this court in the case of Pennock vs Coe, 23 Howard, 117. The rolling stock was procured by the Company, as owners, and adapted to the road as the means of operating; and so long as it is thus used, it should be considered as fixtures, even without statute law. The first mortgage covered all the after acquired rolling stock, except such as should be proven to have been purchased with funds raised upon subsequent mortgage; to that extent those mortgages should have a superior equity. For these reasons the exception will be overruled. But the decree will, in addition to the forty box cars reported by the masters, allow to this mortgage its share of the rolling stock, purchased and procured by the receiver, costing $147,942 in proportion to the net revenues."

On the 13th day of January, 1862, a final decree of foreclosure and sale was made which is in the usual form, and the part thereof describing the property to be sold is as follows, to-wit:

"The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the bill of complaint in this cause, is as follows:"

(Here follows a description of the mortgaged premises in the words of the mortgage as contained on page 3 of this brief and then follows these words:)

"With forty box-cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 262, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 498, 400, 402, 406, 406, and 408, and such portion or share of the rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand, nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to prior mortgages."

On the first day of February, 1862, the Marshal advertised said premises for sale on the 22d day of May, 1862, which sale was at different times postponed to the 2d day of October, 1862, at which time a sale of the premises was had. Record pp. 64* to 72.*

This sale was afterwards vacated by the court, on motion of the purchasers, for reasons which are foreign to the questions now at issue. Record pp. 174* to 175.*

On the 17th day of January, 1863, the Marshal again advertised said premises for sale on the 25th day of April, 1863. Record pp. 184* to 186.*

The printed advertisement of sale described the property to be sold in the words and figures following. Record 196.*

"All and singular the several tracts, pieces or parcels of land, which now or may hereafter be or constitute the site of the roadway, turnouts, engine houses, workshops, and other outbuildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said La Crosse & Milwaukee Railroad Company from Madison by way of Portage City to the St. Croix River or Lake between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said roads, or either of them.

"And also all and singular the rights, liberties, privileges and franchises of said La Crosse & Milwaukee Railroad Company of every kind and description relating to said roads. Also all and singular the lands granted or intended to be granted to said Railroad Company, under and by virtue of an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State, approved June 3d, 1856," and under or by virtue of an act of the Legislature of the State of Wisconsin, approved October 11th, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company," and to execute the trust created by an act of Congress, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in that State," approved June 3d, 1856, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to St. Croix River or Lake, estimated to be about one million of acres of land, together with all and singu-

lar the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate above mentioned and described:

"'The rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, 1856, except forty box-cars numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 369, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 406, 408; and except such proportion or share of said rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad Company hereinbefore mentioned and described bears to the balance or other end of said road since the appointment of the receiver, which said forty box cars and said proportion of rolling stock purchased by the receiver are to be sold free and clear of any incumbrance whatever.'"

Which description was the same as on the previous advertisement of sale.

On the 24th day of April, 1863, the marshal filed his report of sale, record 192* to 195*, and describes the property sold aside from the lands granted by Congress in the words and figures following:—

"And I then offered for sale and sold in like manner, the balance of the premises and property described in said decree, as follows, to wit: "All and singular the several tracts, pieces or parcels of land which constitute the site of the roadways, turnouts, engine-houses, workshops, depots and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between 25 and 31, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots and other buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines,

and other rolling stock, and all the other equipments of every kind and description, which have been procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils and other personal property, which have been procured for or used in connection with said roads or either of them, and also all and singular the rights, liberties, privileges and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description relating to said roads, (of said rolling stock forty box-cars numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364. 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of the road covered by the aforesaid mortgage bear to the balance or other end of said road, was sold free and clear of all lien or incumbrance; but the remainder of the above mentioned rolling stock was sold subject to the lien of mortgages prior in date to the mortgage above mentioned, given by said La Crosse and Milwaukee Railroad Company,) together with the tolls, rents and income to be had or levied therefrom, and all corporate and other rights, franchises and privlleges of the said Company, of, in and to, or concerning the same, being all the property, real or personal, described in the said mortgage, (except the lands therein mentioned granted by Congress to the State of Wisconsin;) and all singular the priveleges, hereditaments, appurtenances to the same belonging or in any wise appertaining, situate, lying and being in the State of Wisconsin, which was bid off by William Wallace Pratt and William H. White, for the sum of two million six hundred and seventy-five thousand dollars, (2,675,000,) they being the highest and best bidders, and that being the highest and best bid made for the premises last above described.

This report, in this particular, was the same as his former report on pages 64* to 66* of Record.

The Record, from page 200* to 296*, contains the exceptions and objections taken to said sale by the different

defendants and parties who claimed an interest therein, and is wholly occupied therewith. None of these exceptions have any bearing upon the questions now before the court, unless it may be the 7th and 8th exceptions of the Minnesota Company, and the same exceptions were taken by some of the other parties, in the same or similar language. These exceptions are found on page 290* of the Record, and are in the following words:

"7th EXCEPTION.—As to the sale of the railroad and its appurtenances, ordered to be sold by the said decree.

"For that the said marshal offered for sale and sold the said railroad and its appurtenances under a description, vague and uncertain as to the quantity and amount of the appurtenances and rolling stock appertaining to the railroad so sold, and of the incumbrances thereon, and as to the extent and nature of the franchises appurtenant to the railroad so sold.

"8TH EXCEPTION.—As to the sale of the railroad and its appurtenances, ordered to be sold by the said decree.

"For that the said marshal so offered for sale and sold the said railroad its appurtenances, under a decree from this court, which does not determine or settle the franchises or right of possession to be acquired by the purchasers of the premises to be sold, and which is too uncertain to be executed according to the established principles of equitable jurisprudence.

These exceptions were all heard by the District Court on the 4th and 5th days of May, 1863. And on the said 5th day of May the following order was made thereon:

"This day came the parties, by their counsel, and the argument of the several exceptions to the sale of the mortgaged premises by the Marshal being concluded, is is ordered by the court that said exceptions be and hereby are overruled. And it is further ordered and decreed by the court that the sale so as aforesaid made, be and hereby is, confirmed and that the Marshal make a deed to the purchasers."—Record 296*.

On the 6th of May 1863, the Milwaukee & St. Paul Railway Company filed its petition in the District Court,

setting out its organization and purchase of the property sold by the Marshal, and asking for possession of the property and rights so sold. To the hearing of which the Minnesota Company objected until the same was reached according to rule 6th of rules prescribed by the Supreme Court for practice in the courts of equity of the United States.

Thereupon the court made a temporary order to remain in force until said petition could be finally heard, the receiver remaining in possession and control, and was directed to make a full and complete inventory of all personal property belonging to said railroad and file the same on the 8thday of June then next to which day the court was adjourned.—Record pages 207* to 300*.

On the 10th of June said inventory was filed (and is contained in record 203 of this term.)

On the 11th day of June, 1863, the Minnesota Company filed its answers at length to said petition, (record pages 300* to 302.*) On which day and the following the said petition and answers were heard and the final order of posession made, (record page 303.*) Which order is in the following words:

"In consideration of the said petition of the Milwaukee & St. Paul Railway Company and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee & St. Paul Railway Company, all and singular the railroad between the City of La Crosse and Portage City, its road-bed and track, with its depots, station houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree, and also the share or proportion of the rolling stock and personal property purchased by the Receiver, as mentioned in the decree; and also subject to other or previous liens or claims, the possession of the rolling stock on hand when the Receiver took the same under the order of the court; and it is further ordered by the court that the said Receiver be and hereby is discharged as

such from the management and control of said Western Division ef said Railroad, under appointment in this case; subject, however, to the orders made in this case and in the other cases in which he was appointed, or may hereafter be appointed."

Under which the Receiver surrendered to the Milwaukee & St. Paul Railway Company, the said Western Division of the La Crosse & Milwaukee Railroad, with the rolling stock which was on the La Crosse Railroad, when the receiver took possession thereof in June, 1860, and also the proportion of rolling stock purchased by the receiver, belonging to that division. This order has never been vacated or rescinded. And the St. Paul Company are still in possession of said Western Division, and said rolling stock under the same, claiming it as owner. A part of this stock was delivered to the Minnesota company, sufficient with their own, to operate their road, on the 20th day of January 1866.

The amount due and secured on this decree at the time of the marshal's sale was $3,921,291. The proceeds of the sale were $2,800,000, leaving due and nnpaid on said decree at the time of said sale $1,129.201, and said last amount with interest from April 25th, 1863, still remains unpaid and secured by said bonds and decree. (See Decree Record 428, Marshal's Report, Record 192.*) Nearly the whole of said bonds and the decree thereon, belonged at the time of such sale, and now belongs, to the Milwaukee & St. Paul Railway Company.--Record, page 11.*

I trust that your Honors will pardon this lengthy statement, as I have endeavored, not only to state my case, but also to give a complete abstract of everything, in this record, of about 800 closely printed pages, which has any bearing upon the questions at issue.

We therefore say in the appeal of Soutter & Knapp in No. 203 of this term.

I.

That the Land Grant Mortgage, so given to Bronson, Soutter & Knapp, did in fact cover and include and was ntended to cover and include, all the rolling stock of said La Crosse & Milwaukee Railroad Company of every kind and description which said Company ever "procured for or used on" said La Crosse & Milwaukee Railroad.

The La Crosse & Milwaukee Railroad Company, was one corporation, one legal existence, and it built and equipped one continuous line of road. It had no separate funds or distinct properties but one road and one property which was all held in one and the same right. There was no separation, division or assignment of its rolling stock to any portion of the road, but it was all held, as was all the rest of its property and effects, as one common property, and in the same right and interest.

Hence, when said Company in express terms mortgaged to the complainants Bronson, Soutter & Knapp, "All and "singular the locomotives, engines and other rolling stock "and all other equipments of every kind and description, "which have already been, or may hereafter be, procured "for or used on said roads," it meant all the rolling stock which said Company had or should thereafter acquire or use thereon. It is difficult to conceive of more comprehensive terms than those used in this mortgage. They are certainly broad enough to cover and include all, and no fair construction could possibly exclude therefrom any portion of the rolling stock so procured or used by said Company. The term "*roads*," used in said mortgage, does not alter or vary this construction; for the proposed line of road from Madison to St. Croix, was, at that time the property of said La Crosse Company, just the same as the line from Milwaukee to La Crosse, and said Company held both lines in the same right, and, as we have seen, they were common for sixty miles. This language, there-

fore, expressly includes all rolling stock that had been or should be procured for or so used on either of said lines. Had the line from Madison to St. Croix been constructed this language would have included and was intended to include the stock of both lines. It would have all been the property of the La Crosse Company, all held in the same right, and all included within the terms of the mortgage.

We have already seen, however, that only one line, from Milwaukee to La Crosse was ever built, therefore the question relative to the two roads does not arise. There was but one line of road constructed, and the rolling stock in dispute was procured for and used on that line. The La Crosse Company procured it and owned it. The Receiver found it on the line of road and took possession of it under the orders of the Court as the rolling stock of the road included in the mortgage.

Again if it were possible to entertain a doubt, as the mortgage originally stood, as to whether the parties intended to include this rolling stock in the Land Grant Mortgage, that doubt has been solved by the action of the parties themselves. After the execution of the Land Grant Mortgage, and after all the rolling stock had been procured, except about $25,000 purchased by Chamberlain and paid for principally by the receiver; and except, also $53,000 worth, purchased by the receiver.

(See the testimony of Goodrich, above quoted, or record 272), to-wit: On the 4th day of September, 1857, the parties, themselves, executed a supplemental mortgage, in which it was expressly stated, that it was the intention of the parties to said Land Grant Mortgage to include therein all the rolling stock of said Company, as well that heretofore, as that thereafter acquired, *wherever the same might be.*

This Mortgage was not counted upon in the bill of

foreclosure; but was introduced as evidence on the trial, to show the actual intent of the parties in giving the original mortgage.

There is no evidence whatever, to show, or tending to show, that this rolling stock was not included in the Land Grant Mortgage. No evidence to show that there were any separate funds out of which the rolling stock was purchased, and no testimony upon which a report or decree could be properly made, excluding said rolling stock from the lien of complainant's Mortgage. While on the contrary, the Mortgage by its express terms, includes it and the supplemental Mortgage, executed in pursuance of the covenants, for further assurance, after the rolling stock was all purchased, or nearly all, reiterates that it was the design and intention to include all the rolling stock therein, and expressly ratifies and confirms such grant.

We therefore submit that the Court should have found and decreed that said Land Grant Mortgage did cover and include all the rolling stock of the entire road, and that it would have been error in the Court below, to have found or adjudged otherwise.

Assuming therefore, that the Land Grant Mortgage did cover and include all the rolling stock of said La Crosse Company, we are next to inquire:

1st, Whether the decree of foreclosure and sale also included it and directed it to be sold, and, if, on a fair and proper construction of said decree, it shall appear that it was so included, then the decree should be affirmed by this Court.

If, on the other hand, such is not the proper construction thereof, then, we shall insist in the 2d place, that said decree must be modified, so as to make it correspond with the mortgage in this particular.

It seems to us peculiarly appropriate, to ask this Court

at this time, to give a construction to this decree, in this particular, for the reason that it was before the Court collaterally, on a partial and imperfect statemeut of the record, or a portion thereof, in the case of the Minnesota Company, vs. The St. Paul Company and others, in 2 Wallace 609. The opinion of the Court then expressed, on such partial and imperfect statement of this record, was the occasion of taking the appeal in this case, No. 203 in order that an authoritive exposition of said decree might be had in a direct proceeding upon the record itself, and, if any error was found therein, that it might be corrected.

II.

The decree of the district Court did include all the rolling stock of the La Crosse Company, and direct its sale.

There are two aspects in which this matter may be, and evidently has been, regarded more or less by the different parties interested.

One idea is to regard rolling stock as in its nature personal property and severable from the road. The other is to consider it a fixture in its nature and not severable from the road by any judicial proceedings.

In the first case, a mortgage upon the road and rolling stock, would be similar to a mortgage upon a farm and the stock thereon, the Court on foreclosure might adjudge the mortgage valid as to the farm and not as to the stock, or, *vice versa*, and might by its decree adjudge the one to be sold and not the other, or to be sold separately as the facts of the case might warrant, there would be no inseperable connection between them, as there would be between a city lot and a brick store erected thereon.

But if on the other hand, the rolling stock of a railroad is in its nature a fixture to the road, a part of the machine; then it is a part of the real estate and can no more be separated from it by judicial procedings for the purpose

of a sale, than could the city lot be separated from the buildings and improvements thereon, for a like purpose. This Court and the Circuit Courts of the United States have uniformly held that rolling stock was in its nature a fixture, and although some of the State Courts have held differently, yet the better, if not settled opinion in all Courts, is now, that such property is a fixture. Such at least, has been the uniform decision of the Federal Courts in the absence of a statute upon the subject.

Pennock vs. Coe. 23 Howard, 117.

The Courts of Wisconsin, however, prior to the passage of the act making it a fixture, were inclined to hold that rolling stock was not a fixture, but personal property.

Commercial Bank vs. Farmer's Loan & Trust Co., 11 Wis., 207.

Hill & et al vs. La Crosse 16 Wis. 214. The La Crosse Company were seeking to guard against the effect of such a construction in giving the supplemental mortgage.

On the hearing in the Court below, the Complainant's counsel treated the rolling stock as in its nature, personal property, and a fixture only by virtue of the statute, and that it was all included in the Land Grant Mortgage, and would pass under the sale on that mortgage to the purchaser, free and discharged of all lien of mortgages prior in date, which were executed previous to the Statute making it a fixture, for the reason that such prior mortgage not having been filed as a Chattel Mortgage was void as to the personal property therein contained.

Revised Statutes of Wis., p 614 S. 9.

This position was overruled on the hearing and again on exception to the Master's report, on the express ground that the rolling stock of the road was a fixture independent of the Statute, and therefore, that the lien of the first mortgage given previous to the Statute making rolling stock a fixture, was good and valid without being filed as a Chattel Mortgage.—(See opinions above quoted.)

The question there litigated, was as to the *priority of lien*, and not as to whether the Land Grant Mortgage *was* a lien. The lien of that mortgage was not denied, but the sole question was as to its priority. This fact is evident from the whole proceedings in the case, and especially from the opinions delivered by the Court below.

It has been argued and assumed that the Court below found and adjudged this rolling stock, except forty box cars, to be a fixture to the eastern ninety-five miles of said road. Such is not the fact; but, on the contrary, the adjudication of the Court is in direct conflict therewith. The order of reference (page 13 ante) directed the masters to report what rolling stock was covered by the first or Palmer mortgage, and what by the second or Bronson & Soutter mortgage. These two mortgages covered the same piece of road—the eastern ninety-five miles consequently if the Court found and adjudged this rolling stock a fixture to said piece of road, it should be covered by both of these mortgages. The masters reported that this rolling stock was included in said first and second mortgages, but the Court, on the exception of the complainants, modified said report by striking out so much thereof as found that this rolling stock was included in said second mortgage (see ante page 16). This action is in irreconcilable conflict with this view of the case so often and earnestly advocated by Mr. Carpenter, and in order to save his theory he was forced to place the Court below in the very ridiculous position of holding that this rolling stock was a fixture to said ninety-five miles of road, and yet that a mortgage on said ninety-five miles, and by its terms expressly including all said rolling stock did not in fact include any part of it (see his briefs in No. 279 of the term of 1864, page 18, and also in original case No. 10 of this term page 20 & 21).

A construction of the orders and decree that will force

the Court below into such a ridiculous and absurd position, should not be hastily adopted.

A proper and just construction leads to no such absurdity.

The issue or contest before the Court below upon this point was as to the priority of the land grant over prior mortgages, as stated above. The Court decided that the land grant was not entitled to such priority, or, in other words, that the first mortgage was a lien upon said rolling stock, and the first lien, but also held that if any of said rolling stock had been purchased by the bonds issued under subsequent mortgages, that such subsequent mortgage should have a preference of lien as to so much as could be shown to have been so purchased. To ascertain this fact, this part of the order of reference was made, the masters make their inquiry under this direction and for this purpose alone, report that forty box cars are included in the Land Grant Mortgage, "*the said cars having been purchased out of the proceeds of a portion of the bonds to which this mortgage is collateral.*"

They further report that all the rest of the rolling stock is included in the first and second mortgage, but the proofs taken by the Masters did not show that any part of said rolling stock was purchased with bonds issued under said second mortgage. Consequently no part of said rolling stock was subject to the lien of said mortgage in preference to the lien of mortgages prior in date to it. Hence, the report was modified by the Court in that particular so as to conform to the facts, and the report as confirmed by the Court, found that the first mortgage was a lien upon all the rolling stock, and a first lien, except as to said forty box cars purchased with Land Grant bonds as to which the lien of the Land Grant Mortgage had a preference to the first mortgage.

This construction is in harmony with the opinions of

the Court, his action in modifying said report, his subsequent action in the premises, and in accordance with the facts in the case and the just rights of all concerned.

Immediately after this modification of the report, the final decree of foreclosure and sale was made, which is in the usual form and purports to direct a sale of the mortgaged property, describing it as it is described in the mortgage, and following that description is the special description of the forty box cars, and the proportion of the rolling stock purchased by the Receiver, which is followed by the sentence "*The remaining rolling stock is subject to prior mortgages.*"—(Ante p 18.)

A brief reference to the subsequent proceedings, will show that both the counsel and Court understood the decree as covering and including all the rolling stock, except the forty box cars purchased by the Receiver, subject to prior mortgages. What were those proceedings?

In February, 1862, the marshal advertised the property for sale, and it was sold in October following. This sale was vacated by the complainants, and the premises were readvertised in January, 1863, and finally sold on the 25th of April, 1863. These advertisements and reports of sale distinctly and implicitly set forth that this rolling stock was to be sold and was sold, subject to prior mortgages.—(Ante, p 18 to 21.) Nearly one hundred pages of the printed record is occupied with exceptions to the report of sale, filed by five or six different parties. The argument of the exceptions occupied two days, after which the sale was confirmed.

Immediately after confirmation, the purchaser applied for possession of the property so sold, which was resisted by the Minnesota Company, and time asked to prepare a defense. Thereupon a temporary order was made and time given said company to resist said application at which time said Company filed its answer and after hearing, an

order was made putting the purchaser in possession of the property as sold.—(Ante p 23) including the rolling stock in question.

This order has never been reversed or modified, and still stands as originally made. The statement that it had been set aside or otherwise annulled, contained in the opinion of the Court. 2 Wallace, 641, is an evident mistake of fact.

It is respectfully submitted that the order of confirmation of the sale as made, and the subsequent order of June 12th, 1863, in this case, delivering to the St. Paul Company the property sold by the marshal under the decree, is an adjudication upon the construction of the decree which binds the parties.

In the opinion of the Court—2 Wallace, 640, this Court say, "if, however, an issue had been made by exceptions or other proper pleading, as to the question whether any particular price of property had been included in the decree or order of sale, and the Court had decided that it was so included, it might be an adjudication upon the construction of the decree which would bind the parties."

The Court then add that "*nothing of the kind occurred in this case.*"

Such conclusion might be legitimate from the record *then* before the Court; but is it true of the record *now* before the Court? Did not the very facts supposed, take place in the Court below, and is not the decision then rendered binding upon the parties upon the principle then stated.

It now appears that instead of the Court's being deceived as to what was sold by the Marshal and passing its confirmation without investigation, that nearly one hundred pages of this printed record is occupied with exceptions to the Marshal's report, that at least five different defendants, by as many different counsel, filed separate

sets of exceptions—that a portion of said exceptions had reference to this rolling stock, and the oral argument thereof occupied two days of the Court. This confirmation, therefore, was not made blindly or in the dark, but after full and most elaborate investigation. After the confirmation the St. Paul Company applied to the Court for possession of the property so sold by the Marshal, which was then in the hands of its Receiver. In answer to that application the Minnesota Company filed its answer, setting up, as is now claimed, that only forty box cars were included in said decree, and that no other rolling stock except said forty cars and the proportion of rolling stock purchased by the Receiver passed by that sale. On the hearing of this application the order of June 12th was made. Record pages 300* to 302*.

This order is in perfect harmony with our theory of this whole case. It delivers to the St. Paul Company the roadbed, forty box cars and the proportion of rolling stock purchased by the Receiver absolutely, and the other rolling stock that was on the road when the Receiver took possession "*subject to other or previous liens or claims.*"

The conclusions of the Court, as stated 2 Wallace 640,-41; "first, that the judge understood his decree and "previous rulings as we, (the Court), have interpreted "them; and, second, that he had no idea that he had "confirmed a sale of all the rolling stock on the road, to "the purchasers at the sale;" however legitimate as applied to the record then before the Court, are wholly unsustained by the record now under consideration. For it now appears that the order of May 7th, 1863, was not intended as the final order on said application, but temporary, merely providing for the custody of the property during the time which was granted to the Minnesota Company to prepare to answer and resist said application.—Record 300* to 302*.

It should be borne in mind also, that this order of June 12th, did not transfer to the St. Paul Company all the rolling stock on said road, it left in the Receivers hands over $200,000 worth, being the proportion of that purchased by the Receiver, belonging to the Eastern Division.

We therefore insist that the true construction of said decree, is that it covered and included all the rolling stock on said road at the time the Receiver took possession and that the whole thereof was rightfully sold by the Marshal.

III.

If we are not correct in the view presented in the foregoing point, then we insist that the rolling stock of this LaCrosse & Milwaukee Railroad Company, was, in its nature, a fixture to the whole road, and that, on the foreclosure and sale of the Land Grant Mortgage covering a proportion of said road, a proportionate or *pro rata* share of said rolling stock passed with the road so sold, and became the property of the purchaser at said sale, and that it was inseparably connected therewith, and could not be detached by judicial proceedings.

The Land Grant Mortgage covered 105 miles of the line from Milwaukee to LaCrosse, which is 200 miles in length. And the purchaser at said sale, thereby became entitled to 105-200 of all the rolling stock of said road.—The General Law of the State of Wisconsin passed in 1856, —(General Laws of Wis., pages 213-16,) expressly authorized said Lacrosse Company to mortgage the whole, or any portion of its railroad, and expressly authorized a sale on such mortgage of the whole or any portion of the road, and provided that the purchasers at such sale should have, exercise and enjoy thereafter all and the same rights, privileges, grants, franchises, immunities and advantages in such mortgage enumerated and conveyed, which belonged to or were enjoyed by the Company making such

mortgage, so far as the same relate or appertain to that portion of said road so mortgaged. And such purchasers were authorized to organize as a Company, and manage and operate said road or portion of road as their own absolute property.

This act fully authorized the severance of an entire railroad, its franchises and appurtenances, by means of such mortgage sale. Consequently, the purchasers at said Land Grant Sale and their assigns thereby became the absolue owners of said Western Division of said LaCrosse Railroad, with a proportionate share of the rolling stock and appurtenances of the whole road, and entitled to hold, use, own and operate the same as an independent railroad, free and discharged from all control or connection with the Eastern Division thereof.

See also Chapter 78 of Private and Local laws of Wisconsin for 1856, page 129. See also Chapter 517. of same volume, page 1,133, also General Laws of Wisconsin, for 1856, page 217.

IV.

If we are not sustained by the record in either the second or third points, and the true construction of this decree is, that but forty box cars were included in said decree, and passed by said marshal's sale to the purchaser; then we insist that said decree is erroneous in that particular, and that it should be modified so as to include all the rolling stock covered by the mortgage.

We have already shown in our first point that the Land Grant Mortgage covered all the rolling stock by its express terms. That there was no separation or division of the rolling stock of said Company, that there were no separate funds out of which it was purchased, and that it was not assigned, appropriated or affixed to one division of the road as against the other. It also appears by the supplemental mortgage, that it was the intention of the the par-

ties to the Land Grant Mortgage to make it a lien upon the rolling stock then on hand or thereafter to be acquitted by said Company. It farther appears from the record, that there was no proof before the masters upon which they could base their report, that it did not cover or include bnt forty box cars. The only testimony before them aside from the mortgages, being that of E. H. Goodrich above quoted. It does not appear that the masters took any testimony for the purpose of determining what rolling stock was covered by the Land Grant Mortgage, but in pursuance of the Judge's opinion, relative to a fanciful equity, which he conceived to exist, they took testimony to ascertain what rolling stock was purchased by Land Grant bonds, and found that forty box cars were so purchased, and report that so many box cars are covered by this mortgage. If this report was made and intended for the purpose that our opponents now claim, it has no foundation upon which to stand. It is wholly unsupported by evidence, and directly in conflict with the plain language of the mortgage, and the evident intent of the parties thereto. Again, if the Court in overruling the complainants exceptions,and in making said decree intended thereby to exclude the complainants from all of said rolling stock,except said forty box cars and the proportion of that purchased by the Receiver, then most clearly, its action was without any foundation, and said order and decree were erroneous. There can be no doubt that said mortgage became a lien on the whole of said rolling stock as of the day of its date, and any adjudication to the contrary is erroneous.— The counsel for the complainants and the purchasers at said sale understood said decree at the time to have the effect stated in our second point, and that the several mortgages on said rolling stock became liens upon the whole thereof, according to their priorities of record.— The bid of said purchasers at said marshal's sale was made upon that hypothesis.

We therefore insist that, if this Court are of the opinion that all of the said rolling stock, except as aforesaid, was excluded from said decree, the decree should be so modified as to include all of said rolling stock subject to liens prior in date to the date of said mortgage, and that said rolling stock should now be sold under the direction of the marshal, to satisfy the amount remaining due on the complainant's decree, now amounting to over $1,500,000.

V.

The execution of a judgment or decree, either, by voluntary payment or enforced by due process of law, or the valuntary receipt of the payment, is no bar or obstruction to the right of appeal by either party, at any time within the period allowed by law for an appeal.

Clowes vs. Dickenson and others, 8 Cowen, 328.
Dyett vs. Pendleton, 8 Cowen, 325.
Higbie et al. vs. Westlake et al. 14 N. Y., 481.
Erwin vs Lowery, 7 Howard, 172.
Merriman vs. Haas, 3 Wallace, 687.
United States vs. Dashiel, 3 Wallace, 688.

The amount due the complainant was settled by the decree, and a decree or order of sale made, to enforce the payment of that amount, on a part of the mortgage property, but a certain other part of the mortgaged property is not included in the decree or order of sale. In such a case, there can be no objection to executing the decree by a sale of so much of the property as is ordered to be sold, and seeking a modification of the decree by an appeal, so as to have it direct the sale of the balance of the property included in the mortgage. Such is our case if our opponent's construction of our decree is to prevail.

VI.

The modification or reversal of this decree, on the point now urged, would not affect the sale already had,

but the title of the property sold would remain in the hands of the purchasers and their assigns, undisturbed by the action of this Court.

In Whitney vs. Bank of United States, 13 Peters, 6, the Court say: "If the sale had been completed under "the decree, the title of the purchaser under the decree "would not have been overthrown or invalidated even by "a reversal of the decree; and, consequently, the title "of the defendants to the lands would have been extin- "guished: and their redress upon the reversal would "have been of a different sort from that of a restitution "of the land sold."

In Jessup vs. City Bank of Racine, 15 Wisconsin, 604, which was a foreclosure of a mortgage on the Racine railroad, judgment of foreclosure and sale had been obtained and a sale had, one of the complainants becoming the purchaser, and the sale was confirmed. Afterwards, one of the defendants took an appeal, and the judgment of foreclosure was reversed, for the reason that it was too large. Subsequently the Court below set aside the sale and confirmation, for the reason that the judgment had been reversed. From this order the purchaser appealed, and the Court reversed the order and affirmed the sale as made; and the Court say: "The "general rule is conceded that when a sale is allowed to "take place upon a judgment, without any steps taken "to stay proceedings, the title of the purchaser will not "be divested by a subsequent reversal of the judgment "for error."

There are some cases that hold that, where the plaintiff becomes the purchaser at the sale, and the subsequent reversal is to the effect that he had no claim or right of action againt the defendant, his purchase is vacated and the property restored to the owner. We are not prepared to dispute the correctness of this rule in such a case; but

in all cases where a stranger purchases at a judicial sale, and in cases where the plaintiff purchases and the reversal does not destroy his claim or right of action, the title of the purchaser is not affected by a subsequent reversal of the judgement upon which the sale was made.

Gray vs. Brignadello, 1 Wallace, 627.
Voorhees vs. Bank U. S., 10 Peters, 449.
Girgnon, Lessee, vs. Astor, 2 How 319.

The appeal of the Minnesota Company No 159, as will be seen from the petition of appeal on page 329* of record is from the order of confirmation of sale made May 5th, 1863, from the temporary order made May 7th, 1863, and from the final order for possession of the property purchased at said Marshal sale, made June 12th 1863; which appeal was prayed December 29th 1864, and finally perfected January 18th, 1865, nearly two years after said orders were made.

VII.

The confirmation of sale was in the proper Court, was a proper order to be made, and should be affirmed.

The chief objection alleged against this order, is that the District Court had not jurisdiction to make it at the time it was made.

The final decree of foreclosure and sale in this cause was made January 13th, 1862. No appeal was taken therefrom, or in this cause, until January 18th, 1865. The sale of the mortgaged premises was made April 25th, 1863. At the April term of the Circuit Court for Wisconsin, held the week succeeding said sale, Mr. Justice Miller presented a copy of the act of March 3d, 1863, to the Bar of said Court, which was the first knowledge that any one of them had of its passage. Opinions upon its effect were expressed at the request of the judges, and it was afterwards announced from the bench, that the Court had concluded that said confirmation should take

place in the District instead of the Circuit Court, and thereupon the District Judge announced that the business of said confirmation would be postponed until after the business of the Circuit Court was completed. Afterwards, and on the 4th of May, it was taken up in the District Court and was argued on the 4th and 5th, on which last day the order of confirmation was made.

On the 6th day of July, 1863, William Crawshay et al. filed a motion in the Circuit Court for a rule on the marshal to report said sale to the Circuit Court, on the ground that the District Court had no jurisdiction thereof, which motion was argued by counsel, on the 26th day of July, 1863, and on the same day overruled for want of jurisdiction.—Record pp. 303* to 316*.

On the 26th day of September Alexander Fleming filed his motion in the Circuit Court to compel the marshal to make report of said sale to that Court and to bring the proceeds of said sale into that Court for distribution, which last motion was overruled on the 29th of September, 1864.—Record pp. 315* to 328*.

On the 7th day of October, 1864, the Milwaukee & Minnesota Railroad Company filed a similar motion in in said Circuit Court.—Record 328*.

Subsequently Mr. Fleming applied to this Court for a mandamus to compel the Circuit Court to grant his application, which was refused. The Court considering in their opinion only Fleming's right to make the application.

It is now contended notwithstanding these decisions that the question is still an open one in this Court, or rather that the opinion of this Court, in the case of Bronson et al vs. La Crosse et al., 1 Wallace, 405, has in principle decided that the District Court had no jurisdiction to confirm said sale. We deny this proposition, and insist that the District Court was the proper tribunal to make and confirm said sale.

The final decree had been made, which was to be executed by a sale of the property before the act of July, 1862, transferring jurisdiction to the Circuit. It therefore came within the letter and spirit of the act of March 3d, 1863. That act provides, "that in all cases wherein "the District Courts had rendered final judgments or "decrees prior to the passage of the act of 15th July, "1862, and which cases might have been brought in the "Circuit courts, the District courts shall have power to "issue writs of execution or other final process, or to use "such other powers and proceedings as may be in accor- "dance with law, to enforce the judgments and decrees."

This was a final decree to be enforced by a sale of the premises, and this power was to be exercised by the District Court, and the return of the Marshal should have been to that Court. This having been done that Court was the proper tribunal to confirm the sale.

2d. There is no ground for disturbing the confirmation as improperly made if jurisdiction attached. The sale was regular and fair, and there is no pretence that a higher price could be obtained. The sale was objected to on technical and immaterial matters, but no attempt made to show that a greater sum could be realized by a re-sale, and should this Court be of opinion that the District Court had not authority to make such confirmation, justice and equity would require that the Circuit Court should be directed to confirm the sale *nun pro tunc*.

VIII.

If the District Court had jurisdiction to confirm the sale it was authorized ta make the orders of May 7th and June 12th.

This property was in the hands of a Receiver at the time of the sale, and in order to complete the sale and delivery, it was necessary that the Receiver should be directed to deliver the property to the purchaser. These

orders only direct the receiver to deliver the property sold to the purchaser. We, therefore, claim that the District Court was authorized by the act of March, 1863, to make the sale on this final decree, and to confirm such sale and order of the Receiver to deliver possession of the property sold as a necessary part of such sale. And, therefore, that all of said orders should be affirmed by this Court if properly before it.

2d. We insist that the orders of May 7th and June 12th, are not the subject of appeal, as they are in no sense final decrees, and therefore not appealable.

Both of these orders are in the nature of discharging a receiver, which this Court holds is a matter of discretion, and not appealable.

The order of May 7th was a temporary order, providing for the custody of the property merely, during the time given the appellant to prepare to resist the applichtion of the purbhaser for the possession of the property purchased. No possession was ever taken under it, nor was the Receiver in any way disturbed by it, or the property interfered with, and it expired of its own limitation, in about thirty days after it was made. It is, therefore, entirely immaterial whether it is reversed or affirmed, if now property before this Court.

The order of June 12th was an order directing the Receiver to deliver to the purchaser the property sold by the marshal, and discharging him as Receiver in this action, except as to rendering his final account. It was necessary and proper to complete and perfect the sale. This order but carried out the former adjudication of the Court, and is in entire harmony with the whole proceedings of the case, and if properly before the Court, should be affirmed.

JOHN W. CARY,
Of Counsel for Soutter & Knapp, for
Complainants.